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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 535

MARGUERITE LORETTA ALDRICH, PETITIONER,

vs.

WILLIAM T. ALDRICH, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

PETITION FOR CERTIORARI FILED JANUARY 10, 1963
CERTIORARI GRANTED APRIL 15, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 737

MARGUERITE LORETTA ALDRICH, PETITIONER,

vs.

WILLIAM T. ALDRICH, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

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[fol. 1]

No. 12139

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

Charleston

Civil Action No. 63

MARGUERITE LORETTA ALDRICH, Plaintiff,

vs.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, a Corporation, and JOHN C. WHITE, Executor of the Estate of M. S. ALDRICH, Deceased, Defendants.

THE PETITION OF MARGUERITE LORETTA ALDRICH FOR AN APPEAL

To the Honorable Judges of the Supreme Court of Appeals of West Virginia:

The petitioner, Marguerite Loretta Aldrich, respectfully represents that she is aggrieved by an order and judgment of the Circuit Court of Putnam County, entered on August 2, 1961, dismissing her complaint and entering judgment for the defendants on the pleadings and the stipulation filed by the parties.

[fol. 2]

Issues

These two issues are raised in this case: First: Will the Circuit Court of Putnam County enforce a Florida decree calling for the assessment of alimony against the estate of M. S. Aldrich? Second: Will the Circuit Court of Putnam County set aside and vacate a deed for real estate executed without consideration by M. S. Aldrich to his son Edwin M. Aldrich on April 22, 1942; and a deed for the

same real estate executed by Edwin M. Aldrich, likewise without consideration, to the defendant, William T. Aldrich, dated November 15, 1946? The trial court decided both propositions in the negative.

Statement of Facts

The plaintiff and M. S. Aldrich were married in 1918. Differences arose between them following which they were divorced in Dade County, Florida, on May 31, 1945. This decree, a copy of which is in the case as "Plaintiff's Exhibit A" awarded alimony to the plaintiff in the sum of $250.00 per month so long as she lived and made the same a charge against the estate of M. S. Aldrich in the event of his death. This part of the decree reads as follows:

"4. That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00 as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court at Miami, Dade County, Florida, and in the event the defendant, Moriel Simeon Aldrich, shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge [fol. 3] upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto;".

On June 5, 1945, M. S. Aldrich petitioned the Circuit Court of Dade County for a rehearing which was denied. The Court, however, reduced the alimony from $250.00 to $215.00 per month. See "Plaintiff's Exhibit B."

M. S. Aldrich died testate on May 29, 1958, while a resident of Putnam County. His last will and testament was duly probated and the estate was put in line for settlement. The plaintiff filed a claim for alimony which accrued after his death. This action was subsequently filed to adjudicate the rights of the plaintiff.

M. S. Aldrich, at the time of his death, owed no alimony to the plaintiff, he having kept his payments current. The appraisal of the estate showed assets in the amount of $7283.50, which was inadequate to meet future obligations of the Florida divorce decree.

William T. Aldrich is the son of M. S. Aldrich. Natalie Aldrich is the wife of William T. Aldrich. Angela Aldrich is the widow of M. S. Aldrich. M. S. Aldrich & Associates, Inc., is a corporation which was principally, if not solely, owned by M. S. Aldrich during his lifetime or until a short time prior to his death. Aldrich-Slicer Company is a corporation organized by William T. Aldrich. John C. White is executor of the M. S. Aldrich estate.

The plaintiff in this action charges that M. S. Aldrich prior to his death, transferred a lucrative insurance business to his son, William T. Aldrich, one of the defendants herein and to Aldrich-Slicer Company, a corporation, owned [fol. 4] by his son, and thereby rendered his estate unable to meet the alimony payments which fell due and were to accrue after his death. She also charges that he owned a farm in Putnam County title to which he had put in his son, Edwin M. Aldrich, in 1942, and which had been conveyed by Edwin to William T. Aldrich in 1946. Both deeds were executed without consideration. She prayed that these transfers and conveyances be set aside and an accounting made. An answer was filed by William T. Aldrich in which he denied the fraudulent charges.

The defendants with the exception of Angela Aldrich, who had not made an appearance in the case, filed a motion for judgment on the pleadings. In order that the legal proposition might be determined with as little expense as possible, a stipulation was entered into and filed setting out that no alimony was owed at the time of the death of M. S. Aldrich. It was also stipulated that there was no constructive or actual fraud in the conveyance of the Putnam County real estate. It was contended by the plaintiff that despite the conveyances the real estate was actually owned by M. S. Aldrich at the time of his death and she so charged in her complaint.

The court held that the Circuit Court of Dade County, Florida, could not impose a duty and obligation on the estate of M. S. Aldrich to pay alimony following his death. Judgment was entered for the defendants. It is from that judgment that this petition for an appeal is prosecuted.

Errors Assigned

1. The court erred in holding that the divorce decree and the decree following on rehearing entered by the Circuit Court of Dade County, Florida, was invalid and unenforceable in so far as they purported to charge the estate of [fol. 5] M. S. Aldrich with alimony which might accrue after his death.

2. The court erred in holding that the deeds for the real estate in Putnam County were not subject to attack by the plaintiff.

3. The court erred in entering judgment for the defendants.

We, therefore, respectfully pray the court to award an appeal to the end that the judgment of the Circuit Court of Putnam County may be reversed.

H. D. Rollins, Attorney for Marguerite Loretta Aldrich, Petitioner.

Clerk's Certificate to costs for and preparation of record (omitted in printing).

[fol. 6] Filed Aug. 18, 1961. G. L. Copen, Clerk Circuit Court, Putnam County.

Filed Aug. 22, 1961. Kenneth E. Hines, Clerk Supreme Court of Appeals of West Virginia.

State of West Virginia, to-wit:

The appeal prayed for in the foregoing petition was allowed on the 16th day of October, 1961. Bond is required in the penalty of $200.00, conditioned according to law.

Attest: Kenneth E. Hines, Clerk Supreme Court of Appeals.

[fol. 7]

RECORD

In Circuit Court of Putnam County, West Virginia

Civil Action No. 63

Marguerite Loretta Aldrich, Plaintiff,

vs.

William T. Aldrich, Natalie Aldrich, Angela Aldrich, M. S. Aldrich & Associates, Inc., Aldrich-Slicer Company, a Corporation, and John C. White, Executor of the Estate of M. S. Aldrich, Deceased, Defendants.

Complaint

To the Honorable John W. Hereford, Judge of said Court:

I

The plaintiff complains of and for cause of action says, that she and M. S. Aldrich were married in the year 1918; that three children were born to them during said marriage, one of whom is the defendant, William T. Aldrich; that differences arose between the plaintiff and the said M. S. Aldrich, which resulted in their separation; that subsequent to their separation, they were divorced by a decree of the Circuit Court of Dade County, Florida, entered on May 31, 1945, a copy of which decree is hereto attached as a part of this Bill of Complaint and designated "Plaintiff's Exhibit A".

II

The plaintiff further says that by the aforesaid decree the plaintiff was awarded alimony in the amount of $250.00 [fol. 8] per month for the duration of her life; that the said alimony was made a charge upon the estate of M. S. Aldrich should he predecease her; that thereafter the said M. S. Aldrich petitioned the aforesaid Circuit Court for a rehear-

ing of the cause and upon rehearing the alimony was reduced to $215.00 per month, but all other terms and conditions were left unchanged from the former decree. A copy of the decree of modification is attached hereto and designated "Plaintiff's Exhibit E".

III

The plaintiff further says that M. S. Aldrich died testate May 29, 1958, while a resident of Putnam County, West Virginia; that his last will and testament was duly probated in said Putnam County, and John C. White was named therein as Executor and qualified as such and said estate is now in process of administration in said County; that the said William T. Aldrich and Angela Aldrich, second wife of M. S. Aldrich, were made sole beneficiaries of his estate; that an appraisal was made of said estate and such assets as were found were appraised at $7,283.50. A copy of said appraisal is attached hereto and designated "Plaintiff's Exhibit C".

IV

The plaintiff further says that the deceased, M. S. Aldrich, for many years prior to his death owned and operated an insurance agency in the City of Charleston, West Virginia, under the name of M. S. Aldrich & Associates, Inc.; that the plaintiff is advised the said decedent was sole owner of said corporation; that he had many large insurance accounts in said corporation and had a very substantial yearly income.

[fol. 9]

V

The plaintiff further says that prior to the death of said M. S. Aldrich, he took his son, the defendant, William T. Aldrich, into his office as an employee; that said William T. Aldrich was a young man at said time and had had no experience in the insurance business or in any business; that the said M. S. Aldrich, as the plaintiff believes, paid to said William T. Aldrich a large salary, far in excess of his worth to the business; that in the month of April, 1958, a short time prior to the decedent's death, the defendant,

William T. Aldrich, and the deceased caused a corporation to be formed by the name of Aldrich-Slicer Company and had all, or practically all, the capital stock of the same issued to the defendant, William T. Aldrich; that they established the offices of this corporation in the offices of M. S. Aldrich & Associates, Inc., caused the said William T. Aldrich to be elected president of said newly formed corporation and placed him in full charge of the same; that thereafter the said William T. Aldrich fraudulently transferred and caused to be transferred the assets, business and accounts receivable of M. S. Aldrich & Associates, to said newly formed corporation without consideration; that the said new corporation, as plaintiff believes, had no assets at time the same started business and the said transfer was made to it without consideration; that the said transfer rendered the said M. S. Aldrich and his estate insolvent or so nearly so that the plaintiff is now unable to collect the alimony provided for her in the aforesaid decree of divorce; that in the course of said transactions between the decedent and the said William T. Aldrich, the decedent, as the plaintiff believes, transferred a part of his stock in M. S. Aldrich [fol. 10] & Associates, Inc., to the said William T. Aldrich, which transfer was also made without consideration.

VI

The plaintiff further says that the only assets which the appraisers of the decedent's estate were able to find totaled $7,283.50; that the said estate is now indebted to the plaintiff in excess of the amount of $4,000.00 and the net assets available are insufficient to pay this arrearage and nothing is available for future payments.

VII

The plaintiff further says that the defendant, William T. Aldrich, now has substantial property holdings in his name, including a farm in Putnam County, West Virginia, all of which came to him through his father, M. S. Aldrich, prior to his death; that said property, including the farm and the insurance business referred to herein was put in the name of said William T. Aldrich, without consideration; that the

said diversion of assets by M. S. Aldrich, to his son, the defendant, William T. Aldrich, and the subsequent manipulation of said assets, left the plaintiff without a remedy to collect the alimony decreed to her unless the said transfers are vacated and set aside and the property put back in the estate of the decedent where it rightly belongs.

The plaintiff, therefore, prays that this bill of complaint be filed; that process issue thereon against all the defendants named herein; that all the defendants be required to answer; that William T. Aldrich be required to answer; that William T. Aldrich be required to disclose the following: (1) The number of shares of stock held by M. S. Aldrich in M. S. Aldrich & Associates, Inc., in 1945, and the [fol. 11] disposition made by him of same; (2) The number of shares of stock which he, the said William T. Aldrich, has in M. S. Aldrich & Associates, Inc., the date he acquired the same, and if acquired through M. S. Aldrich, the consideration paid therefor and to whom paid; (3) The insurance accounts owned by M. S. Aldrich & Associates, Inc., at the time the corporation Aldrich-Slicer Company was formed; (4) Whether any insurance accounts were transferred from M. S. Aldrich & Associates, Inc., to Aldrich-Slicer Company and if so the names of said accounts and the consideration paid and to whom paid; (5) Whether any insurance accounts formerly held and owned by M. S. Aldrich & Associates, Inc., are now owned by Aldrich-Slicer Company, and if so how the latter company acquired the same; (6) The names of the stockholders of Aldrich-Slicer Company; (7) The amount of the assets of Aldrich-Slicer Company at the time it started business and where those assets came from; (8) The names of the insurance and bonding companies that Aldrich-Slicer Company has placed insurance with since the date of its incorporation; (10) The salary paid by M. S. Aldrich & Associates, Inc., to William T. Aldrich, since 1955; (11) A list of all property acquired by William T. Aldrich from M. S. Aldrich and M. S. Aldrich & Associates, Inc., and the consideration paid therefor; (12) A statement of how he acquired the M. S. Aldrich farm in Putnam County and the consideration paid therefor. The plaintiff further prays that the assets of M. S. Aldrich be properly determined and placed in his

estate; that all illegal transfers and all transfers without consideration made by M. S. Aldrich & Associates, Inc., and M. S. Aldrich to William T. Aldrich be set aside and vacated; that the assets properly belonging to the estate of M. S. Aldrich, deceased, when determined, be placed in a trust and held for the purpose of paying off and discharging [fol. 12] the obligation of the estate to the plaintiff; that all proper orders and decrees be entered herein; that the plaintiff be given such other and further relief as may be proper in the premises and to equity may seem meet. And as in duty bound, the plaintiff will ever pray, etc.

H. D. Rollins, Counsel for Plaintiff, 305 Davidson Building, Charleston, West Virginia.

CLERK'S NOTE

Exhibits A, B and C of this Complaint being the same as Exhibits A, B and C of the amended Complaint hereinafter printed (side folios 21-31, pages 16-24) are omitted from the printed record.

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT, ETC.—Dated December 28, 1960, and Entered January 3, 1961

This action came on for hearing before the Court, Honorable John W. Hereford presiding, on the following motions:

1. Motion by the defendant Natalie Aldrich to dismiss the action because the complainant fails to state a claim against said defendant upon which relief can be granted.

2. Separate motions by the defendants William T. Aldrich, M. S. Aldrich & Associates, a corporation, and Aldrich-Slicer Company, a corporation, to require the plaintiff to give security for the payment of costs pursuant to Code, 59-2-2.

3. Separate motions of the defendants William T. Aldrich, M. S. Aldrich & Associates, a corporation, and Al- [fol. 13] drich-Slicer Company, a corporation, to direct the plaintiff to file a more definite statement.

During the course of argument by counsel, counsel for the plaintiff moved for leave to file an amended bill of complaint, which motion was not opposed by counsel for the defendants making the motions above listed, and counsel for said defendants further agreed to withdraw said motions in the light of the permission granted to the plaintiff to file an amended complaint.

Therefore, it is Ordered and Adjudged:

1. The plaintiff shall post bond with security as provided by Chapter 59, Article 2, Section 2, of the West Virginia Code, to secure payment of any costs which may be awarded to the defendants, and any fees due or to become due in this action, in the penalty of $500.00.

2. The plaintiff is granted permission to file an amended bill of complaint.

3. The defendants Natalie Aldrich, William T. Aldrich, M. S. Aldrich & Associates and Aldrich-Slicer Company are granted permission to withdraw the motions heretofore made by them and hereinabove described, and all of said motions are hereby withdrawn except the motion for security for costs.

Dated, 12-28-60.

John W. Hereford, Judge.

Submitted by: Ernest H. Gilbert, Attorney for Natalie [fol. 14] Aldrich, William T. Aldrich, M. S. Aldrich & Associates and Aldrich-Slicer Company.

Approved by: H. D. Rollins, Attorney for Plaintiff.

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

AMENDED COMPLAINT

To the Honorable James Lee Thompson, Judge of said Court:

I

The plaintiff complains of and for cause of action says, that she and M. S. Aldrich were married in the year 1918; that three children were born to them during said marriage,

one of whom is the defendant, William T. Aldrich; that differences arose between the plaintiff and the said M. S. Aldrich, which resulted in their separation; that subsequent to their separation, they were divorced by a decree of the Circuit Court of Dade County, Florida, entered on May 31, 1945, a copy of which decree is hereto attached as a part of this Bill of Complaint and designated "Plaintiff's Exhibit A."

II

The plaintiff further says that by the aforesaid decree the plaintiff was awarded alimony in the amount of $250.00 per month for the duration of her life; that the said alimony was made a charge upon the estate of M. S. Aldrich [fol. 15] should he predecease her; that thereafter the said M. S. Aldrich petitioned the aforesaid Circuit Court for a rehearing of the cause and upon rehearing the alimony was reduced to $215.00 per month, but all other terms and conditions were left unchanged from the former decree. A copy of the decree of modification is attached hereto and designated "Plaintiff's Exhibit B."

III

The plaintiff further says that M. S. Aldrich died testate May 29, 1958, while a resident of Putnam County, West Virginia; that his last will and testament was duly probated in said Putnam County, and John C. White was named therein as executor and qualified as such and said estate is now in process of administration in said County; that the said William T. Aldrich and Angela Aldrich, second wife of M. S. Aldrich, were made sole beneficiaries of his estate; that an appraisal was made of said estate and such assets as were found were appraised at $7,283.50. A copy of said appraisal is attached hereto and designated "Plaintiff's Exhibit C."

IV

The plaintiff further says that the deceased, M. S. Aldrich, for many years prior to his death owned and operated an insurance agency in the City of Charleston, West Vir-

ginia, under the name of M. S. Aldrich & Associates, Inc.; that the plaintiff is advised the said decedent was sole owner of said corporation; that he had many large insurance accounts in said corporation and had a very substantial yearly income.

[fol. 16] V

The plaintiff further says that prior to the death of said M. S. Aldrich, he took his son, the defendant, William T. Aldrich, into his office as an employee; that said William T. Aldrich was a young man at said time and had had no experience in the insurance business or in any business; that the said M. S. Aldrich, as the plaintiff believes, paid to said William T. Aldrich a large salary, far in excess of his worth to the business; that in the month of April, 1958, a short time prior to the decedent's death, the defendant, William T. Aldrich, and the deceased caused a corporation to be formed by the name of Aldrich-Slicer Company and had all, or practically all, the capital stock of the same issued to the defendant, William T. Aldrich; that they established the offices of this corporation in the offices of M. S. Aldrich & Associates, Inc., caused the said William T. Aldrich to be elected president of said newly formed corporation and placed him in full charge of the same; that thereafter the said William T. Aldrich fraudulently transferred and caused to be transferred the assets, business and accounts receivable of M. S. Aldrich & Associates, to said newly formed corporation without consideration; that the said new corporation, as plaintiff believes, had no assets at time the same started business and the said transfer of the assets of M. S. Aldrich & Associates, Inc., was made to it without consideration; that the said transfer rendered the said M. S. Aldrich and his estate insolvent or so nearly so that the plaintiff is now unable to collect the alimony provided for her in the aforesaid decree of divorce; that in the course of said transactions between the decedent and the said William T. Aldrich, the decedent, as the plaintiff believes, transferred a part of his stock in M. S. Aldrich & Associates, Inc., to the said William T. Aldrich, which transfer was also made without consideration.

[fol. 17] VI

The deceased, M. S. Aldrich, owned a parcel of land in Putnam County, West Virginia, which was conveyed to him by C. B. Hildreth. On April 22, 1942, the said M. S. Aldrich executed a deed for no consideration purporting to convey title to said land to his son, Edwin M. Aldrich. A copy of this deed is attached hereto as "Plaintiff's Exhibit D."

On November 15, 1946, Edwin M. Aldrich and wife at the request of M. S. Aldrich, executed a deed conveying title to said land to the defendant, William T. Aldrich, which conveyance was also made without consideration. A copy of this deed is attached hereto as "Plaintiff's Exhibit E."

The deed from M. S. Aldrich to Edwin M. Aldrich purports to bear the signature of the plaintiff. The plaintiff does not remember having signed said deed and is of the opinion that she did not sign the same and that her name was forged thereto. She does remember that M. S. Aldrich insisted that she sign such a deed. Edwin M. Aldrich at the time was an infant and was a cadet at West Point preparing to be a professional army officer, and the plaintiff was unable to understand why M. S. Aldrich wanted to put title to the property in his name. The plaintiff refused to execute the deed and she is now unable to say whether she signed it or not. She demands that the original deed be produced so that she may take a look at what purports to be her signature.

The deed from Edwin M. Aldrich to the defendant, William T. Aldrich, was likewise made at the direction of M. S. Aldrich. After the said deeds were made, M. S. Aldrich continued to occupy the land as his home, and [fol. 18] during the time made substantial improvements on it at his own expense; and the plaintiff says, he, M. S. Aldrich retained the ownership of the land and owned it and lived on it at the time of his death even though title was in the name of the defendant, William T. Aldrich.

Natalie Aldrich is the wife of William T. Aldrich. If the deeds above referred to should be set aside and title to the land put back in the estate of M. S. Aldrich, the inchoate dower right of Natalie Aldrich would be brought in question and she is, therefore, a necessary party to this action.

VII

The plaintiff further says that the only assets which the appraisers of the decedent's estate were able to find totaled $7,283.50; that the said estate is now indebted to the plaintiff in excess of the amount of $4,000.00 and the net assets available are insufficient to pay this arrearage and nothing is available for future payments.

VIII

The plaintiff further says that the defendant, William T. Aldrich, now has substantial property holdings in his name, including the aforesaid farm in Putnam County, West Virginia, all of which came to him through his father, M. S. Aldrich, prior to his death; that said property, including the farm and the insurance business referred to herein was put in the name of William T. Aldrich without consideration; that the said diversion of assets by M. S. Aldrich to his son, the defendant, William T. Aldrich, and the subsequent manipulation of said assets, left the plaintiff without a remedy to collect the alimony decreed [fol. 19] to her unless the said transfers are vacated and set aside and the property put back in the estate of the decedent where it rightly belongs.

The plaintiff, therefore, prays that this amended complaint be filed; that all the defendants be required to answer this amended complaint; that William T. Aldrich be required to disclose the following: (1) the number of shares of stock held by M. S. Aldrich in M. S. Aldrich & Associates, Inc., in 1945, and the disposition made by him of same; (2) the number of shares of stock which he, the said William T. Aldrich, has in M. S. Aldrich & Associates, Inc., the date he acquired the same, and if acquired through M. S. Aldrich, the consideration paid therefor and to whom paid; (3) the insurance accounts owned by M. S. Aldrich & Associates, Inc., at the time the corporation Aldrich-Slicer Company was formed; (4) whether any insurance accounts were transferred from M. S. Aldrich & Associates, Inc., to Aldrich-Slicer Company and if so the names of said accounts and the consideration paid and to whom paid; (5) whether any insurance accounts formerly held and owned

by M. S. Aldrich & Associates, Inc., are now owned by Aldrich-Slicer Company, and if so, how the latter company acquired the same; (6) the names of the stockholders of Aldrich-Slicer Company; (7) the amount of the assets of Aldrich-Slicer Company at the time it started business and where those assets came from; (8) the names of the insurance and bonding companies that Aldrich-Slicer Company has placed insurance with since the date of its incorporation; (9) the salary paid by M. S. Aldrich & Associates, Inc., to William T. Aldrich since 1955; (10) a list of all property acquired by William T. Aldrich from M. S. Aldrich and M. S. Aldrich & Associates, Inc., and the consideration paid therefor; (11) a statement of how he acquired the M. S. Aldrich farm in Putnam County and the [fol. 20] consideration paid therefor. The plaintiff further prays that the assets of M. S. Aldrich be properly determined and placed in his estate; that all illegal transfers and all transfers without consideration made by M. S. Aldrich & Associates, Inc., and M. S. Aldrich to William T. Aldrich be set aside and vacated; that the assets properly belonging to the estate of M. S. Aldrich, deceased, when determined, be placed in a trust and held for the purpose of paying off and discharging the obligation of the estate to the plaintiff; that all proper orders and decrees be entered herein; that the plaintiff be given such other and further relief as may be proper in the premises and to equity may seem meet. And as in duty bound, the plaintiff will ever pray, etc.

H. D. Rollins, Counsel for Plaintiff.

Certificate of Service (omitted in printing).

[fol. 21]

PLAINTIFF'S EXHIBIT A TO AMENDED COMPLAINT

Book 728 Page 333

FINAL DECREE DIVORCE Filed this 31 day of May, A. D. 1945 and Recorded this 1 day of June A. D. 1945 in Chancery Order Book 728 on Page 333. E. B. LEATHERMAN, Clerk Circuit Court. By: H. Gardner, Deputy.

In the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County. In Chancery No. 77727.

Marguerite Loretta Aldrich, Plaintiff,

v.

Moriel Simeon Aldrich, Defendant.

This cause came on for final hearing after due notice upon the plaintiff's bill of complaint and upon the further proceedings appearing in the record and upon all the testimony heretofore taken before the Court and the evidence submitted to the Court and upon the pleadings and proceedings herein and upon the motion of the plaintiff for the entry of a final decree, and the Court having considered all of the foregoing and the case in the entirety, it is

ORDERED, ADJUDGED AND DECREED;

1. That this suit has been properly brought and maintained and that the Court has jurisdiction of the cause and of the subject matter hereof and of the parties hereto;

2. That the equities are with the plaintiff and that she has proved the material allegations of her bill of complaint to the satisfaction of the Court;

[fol. 22] 3. That the marriage between the plaintiff, Marguerite Loretta Aldrich, and the defendant, Moriel Simeon Aldrich, be and the same is hereby dissolved and that the parties are and each of them is hereby divorced a vinculo matrimonii;

4. That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00

as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court at Miami, Dade County, Florida, and in the event the defendant, Moriel Simeon Aldrich shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto;

And it further appearing from the plaintiff's bill of complaint and from the evidence that the parties jointly own a home in Coral Gables, Florida, described as follows:

> Lot 1, in Block 24, of CORAL GABLES, SECTION "B", according to the plat thereof recorded in Plat Book 5, page 111, Public Records of Dade County, Florida;

as an estate by the entireties, together with the furniture, furnishings and fixtures therein contained, it is ORDERED, ADJUDGED AND DECREED:

5. That the ownership and title to the land aforesaid, together with the furniture, furnishings and fixtures therein contained be and it is hereby awarded to the plaintiff, Marguerite Loretta Aldrich, and that the defendant, Moriel [fol. 23] Simeon Aldrich be and he is hereby divested of any and all right, title or interest in or to said property, and that all right, title and interest in and to said property is hereby vested in the plaintiff, Marguerite Loretta Aldrich; and this Court retains jurisdiction to make same effective.

It further appearing to the Court that said property is now encumbered by the lien of that certain mortgage given by M. S. Aldrich and wife, Marguerite Loretta Aldrich (the plaintiff and defendant herein) to National Title Insurance Company, a Florida corporation, dated January 13, 1941, and recorded in Mortgage Book 1313, at page 327, Public Records of Dade County, Florida, in the original principal sum of $10,600.00, payable $236.00 monthly, which mortgage was thereafter assigned to Federal National Mortgage Association by assignment recorded in Assign-

ment Book 196, page 139, Public Records of Dade County, Florida, on which mortgage there is owing a balance which the defendant is obligated to pay; it is ORDERED, ADJUDGED AND DECREED:

6. That the defendant be and he is hereby ordered and required to make the payments due under said mortgage as they severally become due.

And the plaintiff having applied to this Court for a further award of suit money, attorney's fees and costs in connection with this proceeding, and the Court having considered the plaintiff's said application for suit money and temporary alimony, it is ORDERED, ADJUDGED AND DECREED:

7. That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff or to her solicitor of record the sum of $4,000.00 for her ad- [fol. 24] ditional suit money and attorney's fees; and it is further ORDERED, ADJUDGED AND DECREED:

8. That this Court shall have and retain jurisdiction of this cause for the entry of such further orders touching the custody, support and education of the minor child of said parties as shall from time to time be deemed necessary.

DONE AND ORDERED this May 29, 1945.

/s/ PAUL D. BARNES
Circuit Judge.

PLAINTIFF'S EXHIBIT B TO AMENDED COMPLAINT

In the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County. In Chancery, No. 77727.

Marguerite Loretta Aldrich, Plaintiff,

v. : Order Modifying Final Decree.

Moriel Simeon Aldrich, Defendant.

This cause coming on to be heard upon defendant's petition for reduction of permanent alimony and for the modi-

fication of the final decree herein, and it appearing to the Court that a Petition for Rehearing has been heretofore filed in this cause, and argument had thereon and that the Court had announced its ruling denying the said Petition for Rehearing, but that no order had been entered thereon; and it further appearing to the Court that the actual custody of the minor child of the parties by reason of fortuitous circumstances has been changed from the plaintiff to the [fol. 25] defendant, and that the burden of the support of said child has now devolved upon the Defendant, and that the alimony awarded to the Plaintiff by the final decree included support money for said minor child; and it further appearing that the Defendant has heretofore fully complied with all the requirements of the final decree; and the Court so finding and being otherwise duly advised in the premises;

IT IS THEREUPON ORDERED, ADJUDGED AND DECREED as follows:

1. That the Defendant's Petition for Rehearing filed herein on June 5, 1945, be and the same is hereby denied;

2. That Paragraph 4 of the final decree entered herein be and the same is hereby modified in that the amount of permanent alimony awarded to Plaintiff and ordered to be paid by Defendant is hereby reduced from the sum of Two Hundred Fifty Dollars ($250.00) per month to the sum of $215.00 per month from and after the date hereof.

DONE AND ORDERED in Chambers at Miami, Florida, this 25th day of June, 1946.

PAUL D. BARNES
Circuit Judge.

A true Copy of the Original on file in the Clerk's Office. WITNESS my hand and Official Seal, This 19 day of June A. D. 1958.

E. B. LEATHERMAN,
Clerk Circuit Court Dade County, Florida

By: /s/ C. J. COURNAYES, D. C.

[fol. 26]

PLAINTIFF'S EXHIBIT C TO AMENDED COMPLAINT

NOTE:

No relative or immediate member of the family of the deceased should be named as appraiser to appraise estates. Appraisements must be impartial and based upon facts. All property including government bonds, treasury certificates and war-savings stamps must be appraised. The appraisal must be completed and filed within sixty days after death of decedent. (In recording, omit these instructions and those at the bottom of the last page.)

APPRAISEMENT

State of West Virginia,
County of Putnam, to-wit:

We, the undersigned, duly appointed appraisers, do solemnly swear that we and each of us will diligently, faithfully, and impartially seek to ascertain the true and actual value of the property, real and personal, of whatever character and wheresoever situate, including moneys, credits, investments, annuities, insurance policies, judgments and decrees for moneys, notes, industrial bonds, securities of the United States or of any State, County, District or Municipality, or of any foreign state or country, accounts receivable and all other evidences of debt whether owing to the decedent by person or corporations in or out of the state, and all tangible personalty of every character, or any interest therein, belonging to the estate of Moriel S. Aldrich, deceased, and a late resident of Scott district, Putnam County, West Virginia, and to place thereon, after careful examination, what, in our judgment, is true and actual value of each item of property so listed and examined, together with the aggregate value thereof, and [fol. 27] to submit the same as our findings as provided by law.

V. K. Knapp, Appraiser.	Address Hurricane, W. Va.
Agnes Brown, Appraiser.	Address Scott Depot, W. Va.
Louise Boyer, Appraiser.	Address Winfield, W. Va.

INVENTORY

Item No. 1. Real estate or any interest in real estate tangible or intangible in this or any other state.

	Assessed Valuation	Appraised Valuation
Lots No. 70 and 71, Laurel Terrace Add., Parkersburg, W. Va.—one-half undivided interest	150.00	300.00
Totals	$150.00	$300.00

Item No. 2. Tangible Personal Property of every kind.

1956 Mercury 4-door Sedan	1,600.00
Miscellaneous personalty (furniture, appliances, etc.)	500.00
Total	$2,100.00

Item No. 3. Government bonds and securities of every kind. (Show date of purchase, serial numbers, etc.)

3 $100 U. S. Government Series G. Bonds	300.00
Total	$300.00

[fol. 28] Item No. 4. Shares of corporate stock of every kind.

40 shares Union Apple Co.	40.00
9½ shares Glenville Gas Production Co.	-0-
107½ shares Conway Oil Company	-0-
1 share Charleston Boat Club	100.00
13 shares Budd Company	180.00
2 shares Studebaker-Packard Co.	10.50
20 shares American Fidelity & Casualty Co.	265.00
200 shares M. S. Aldrich & Associates, Inc.	200.00
45 shares Scary Consolidated, Inc.	45.00
Total	$1,040.50

Item No. 5. Money, certificates of deposit, notes, accounts receivable and all other evidences of debt. (Show dates of notes, etc.)

Note dated 31 January 1958 payable to J. B. Cummins & M. S. Aldrich in original amount of $4,500.00 at 6% (monthly payments credited to Aldrich estate account are $23.08)	2,233.00
On deposit at National Bank of Commerce, Charleston W. Va. in estate name as of 2 June 1958	130.00
Total	$2,363.00

Item No. 6. All other assets not hereinbefore mentioned including insurance payable to the estate.

Chose in action against American Fidelity & Casualty Co., Richmond, Va. in the amount of $99,000.00 of doubtful value because of deaths of parties to partially oral contract or agreement	100.00
[fol. 29] Contract to purchase Lots 9 & 10, Block 9, Unit D Harbour Heights, Punta Gorda, Florida	1,080.00
Total	$1,080.00

Item No. 7. Gifts, Annuities, Jointly held property.

NONE.

RECAPITULATION OF ALL PROPERTY, Excluding Item No. 7

Item No. 1	Real estate or any interest therein	$ 300.00
Item No. 2	Tangible personal property of every kind	2,100.00
Item No. 3	Government bonds and securities of every kind	300.00
Item No. 4	Shares of corporate stock of every kind	1,040.50
Item No. 5	Money, certificates of deposit, notes, accounts, etc.	2,363.00
Item No. 6	All other assets and hereinbefore mentioned	1,180.00
	GRAND TOTAL, Excluding Item No. 7	$7,283.50

After diligently performing our duties as appraisers under the aforesaid oath, the foregoing is respectfully submitted as our report and findings for recordation in the County Clerk's office of said County, and a true copy to be transmitted to the tax commissioner at Charleston, West Virginia.

Given under our hands this ..... day of ....., 19.....

V. K. Knapp, Appraiser.
[fol. 30] Agnes Brown, Appraiser.
Louise Boyer, Appraiser.

Date of Death of Deceased May 29, 1958. Did Decedent have a Will? Yes.

Name of Beneficiary	Relationship
William T. Aldrich	Son
Angela Aldrich	Wife

I hereby accept the foregoing as the true and lawful appraisal of all the assets of the estate of Moriel S. Aldrich, deceased.

Executor.
(Signed) ..... Administrator

Address of fiduciary 400 Union Bldg., Charleston, W. Va.

(John C. White)

I, John G. Anderson, Commissioner of Accounts of Putnam County, West Virginia, to whom the estate of M. S. Aldrich, deceased, was referred, do hereby approve the foregoing appraisement of such estate.

Given under my hand this 5th day of December 1958.

John G. Anderson
Commissioner of Accounts.

The appraisers should inquire of the executor or administrator and of members of the family whether there is any joint bank account, jointly held stocks, bonds, notes or other personal or real property held jointly by the decedent and any other person, with right of survivorship, and if the [fol. 31] decedent made any gift or conveyance without adequate money consideration and whether he purchased any annuity payable to himself or any other person, and list every item in Item No. 7, giving the names of all parties involved, and the value of such items at the death of the decedent. The foregoing items are not part of the decedent's estate but they are required by law to be appraised.

Please type name of administrator or executor under the signature.

PLAINTIFF'S EXHIBIT D TO AMENDED COMPLAINT

THIS DEED, Made this 22 day of April, 1942, by and between M. S. Aldrich and Marguerite L. Aldrich, his wife, parties of the first part and Edwin M. Aldrich, party of the second part;

WITNESSETH: That for and in consideration of the sum of Ten Dollars ($10.00), in hand paid to the said parties of the first part, the receipt of which is hereby acknowledged, and other good and valuable considerations, the said parties of the first part do GRANT, SELL and CONVEY with GENERAL WARRANTY, unto the said party of the second part, that certain tract or parcel of land, together with improvements thereon and appurtenances thereunto belonging, lying on the waters of Little Sandy Creek, in Scott District, Putnam County, West Virginia, and more particularly bounded and described as follows, to-wit:

Beginning at an iron pipe in the line of W. S. Kirtley; thence S 48-15 E 276 feet to a pipe on the northeast side of an elm tree; thence S 59-15 E 217 5/10 feet, more or less, [fol. 32] to a stake in the right of way line of State Highway 17; thence with said right of way line of said Highway N 27-E 703 feet to a stake in said right of way; thence continuing said right of way line N 30-30 E 287 feet to a

stake in right of way; thence N 59-30 W with right of way 35 feet to a stake; thence N 30-30 East with said right of way 130 feet to a point in center of Little Scary Creek; thence leaving said Highway N 25-28 W 185 feet, more or less, to a point in center of Little Scary Creek; thence S 47-30 W 780 feet with line of W. S. Kirtley to a fence post, thence S 33-05 W with line of W. S. Kirtley 397 feet to the point of beginning; containing 10 acres more or less, being the same property heretofore conveyed to M. S. Aldrich, one of the parties of the first part herein, by C. B. Hildreth and Katherine King Hildreth, his wife, by deed dated the 11th day of August, 1941, and of record in the office of the Clerk of the County Court of Kanawha County, West Virginia, in Deed Book ..... at page .....

WITNESS the following signatures and seals:

MARGUERITE L. ALDRICH (Seal)

M. S. ALDRICH (Seal)

State of West Virginia,
County of Kanawha, to-wit:

I, R. A. Keeling, a Notary Public in and for said County and State, hereby certify that M. S. Aldrich, whose name is signed to the foregoing writing, bearing date the 22 day of April, 1942, has this day acknowledged the same before me in my said County.

[fol. 33] Given under my hand this 22 day of April, 1942.

My commission expires the 25 day of June, 1945.

R. A. KEELING
Notary Public, Kanawha
County, West Virginia.

(Notarial Seal)

State of Florida
County of Dade, to-wit:

I, Warren Lehman, a Notary Public in and for said County and State, hereby certify that Marguerite L. Aldrich, whose name is signed to the foregoing writing,

bearing date the 22 day of April, 1942, has this day acknowledged the same before me in my said County.

Given under my hand and Notarial Seal this 22 day of April, 1942.

Notary Public State of Florida
at Large.

My commission expires Jan. 29th, 1945.

My commission expires the day of ....., 19.....

Warren Lehman
Notary Public.

(Notarial Seal)

[fol. 34] West Virginia, Putnam County Court Clerk's Office.

April 25, 1942. 2:10 P. M.

THIS DEED was this day presented to me in my office, and thereupon, together with the certificate thereto annexed, is admitted to record.

Teste: A. M. Brown, Clerk.

Plaintiff's Exhibit E to Amended Complaint

THIS DEED, Made this 15th day of November, 1946, by and between Edwin M. Aldrich and Marge T. Aldrich, his wife, parties of the first part, and William T. Aldrich, party of the second part;

WITNESSETH: That for and in consideration of the sum of Ten Dollars ($10.00), in hand paid to the said parties of the first part, the receipt of which is hereby acknowledged, and other good and valuable considerations, the said parties of the first part do GRANT, SELL and CONVEY with GENERAL WARRANTY, unto the said party of the second part, that certain tract or parcel of land, together with improvements thereon and appurtenances thereunto belonging lying on the waters of Little Scary Creek, in

Scott District, Putnam County, West Virginia, and more particularly bounded and described as follows, to-wit:

Beginning at an iron pipe in the line of W. S. Kirtley; thence S 48-15 E. 276 feet to a pipe on the northeast side of an elm tree; thence S 59-15 W 217 5/10 feet, more or less, to a stake in the right of way line of State Highway 17: [fol. 35] thence with said right of way line of said Highway N. 27 E 703 feet to a stake in said right of way; thence continuing said right of way line N 30-30 E 287 feet to a stake in right of way; thence N 59-30 W with right of way 35 feet to a stake; thence N 30-30 East with said right of way 130 feet to a point in center of Little Scary Creek; thence leaving said Highway N. 25-28 W 185 feet, more or less, to a point in center of Little Scary Ck.; thence S 47-30 W. 780 ft. with line of W. S. Kirtley to a fence post, thence S. 33-05 W. with line of W. S. Kirtley 397 feet to the point of beginning; containing 10 acres more or less; and being all of the property conveyed to Edwin M. Aldrich of the first part by M. S. Aldrich and wife by deed bearing date April 22, 1942, and recorded in the office of the Clerk of the County Court of Putnam County, West Virginia, in Deed Book 76, page 298; and being also the same property conveyed to M. S. Aldrich by C. B. Hildreth and wife by deed dated August 11, 1941, and duly recorded in said Clerk's Office.

WITNESS the following signatures and seals:

EDWIN M. ALDRICH (Seal)

MARGE TAYLOR ALDRICH (Seal).

State of West Virginia,
County of Kanawha, to-wit:

I, R. A. Keeling, a Notary Public in and for the County aforesaid, do certify that Edwin M. Aldrich, and Marge T. Aldrich, his wife, whose names are signed to the writing hereto annexed, bearing date the 15th day of November, [fol. 36] 1946, have this day acknowledged the same before me in my said County.

Given under my hand this 19th day of June, 1947.

My commission expires on the 22 day of June, 1955.

R. A. KEELING
Notary Public in and for Kanawha County, West Virginia.

West Virginia, Putnam County Court Clerk's Office.

July 9, 1947. 9:12 A. M.

This DEED was this day presented to me in my office, and thereupon, together with the certificate thereto annexed, is admitted to record.

Teste: A. M. BROWN, Clerk.

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

STIPULATION OF COUNSEL RE EXTENSION OF TIME FOR DEFENDANTS TO ANSWER—Filed February 23, 1961

It is hereby stipulated by and between all of the parties hereto that the time within which the defendants, and each of them, may answer or otherwise respond to the amended complaint is extended until March 10, 1961.

Dated February 22, 1961.

By H. D. Rollins, Attorney for Plaintiff.

[fol. 37] By Ernest H. Gilbert, Attorney for the Defendants, Natalie Aldrich, William T. Aldrich, M. S. Aldrich & Associates, Inc., a corporation, and Aldrich-Slicer Company, a corporation, 1101 Security Building, P. O. Box 1513, Charleston 25, West Virginia.

By Jno. C. White, Attorney for the Defendant John C. White, Executor of the Estate of M. S. Aldrich, deceased, Union Building, Charleston, West Virginia.

[File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF WILLIAM T. ALDRICH TO AMENDED COMPLAINT —Filed February 25, 1961

First Defense

The complaint fails to state a claim against this defendant upon which relief can be granted for the following reasons:

[fol. 38] 1. The claim of the plaintiff is predicated upon a foreign decree which is not enforceable in this action for the reasons that (1) it is contrary to West Virginia law, (2) it is not within the full faith and credit provisions of the Constitution of the United States and the Constitution of West Virginia, and (3) even if otherwise valid, it cannot operate in rem upon land in West Virginia.

2. The statements contained in paragraph three of Part VI of the complaint are too vague and uncertain to constitute a sufficient allegation of forgery or other fraud.

Second Defense

The right of action, if any, set forth in the complaint against this defendant did not accrue within five years next before the commencement of this action.

Third Defense

Plaintiff is estopped to deny the validity of the deed dated April 22, 1942, described in the first paragraph of Part VI of the amended complaint, for the reason that she executed and acknowledged said deed as one of the grantors named therein.

Fourth Defense

1. This defendant admits the allegations of Part I of the amended complaint.

2. This defendant admits the allegations of Part II of the amended complaint, but denies that the effect of the decree of the Circuit Court of Dade County, Florida, men-
[fol. 39] tioned therein, was to make any valid charge upon the West Virginia estate of M. S. Aldrich, deceased.

3. This defendant admits the allegations of Part III of the amended complaint.

4. This defendant denies the allegations of Part IV of the amended complaint.

5. This defendant admits that for a period of several years immediately before the death of M. S. Aldrich he worked for M. S. Aldrich & Associates, Inc., a corporation; but denies each and every other allegation contained in Part V of the amended complaint.

6. This defendant admits the execution and delivery of the two deeds described in the first two paragraphs of Part VI of the amended complaint, and likewise admits the allegations of the last paragraph of said Part VI; and denies each and every other allegation contained in said Part VI.

7. This defendant denies that the estate of M. S. Aldrich is indebted to the plaintiff in any amount; and admits the other allegations of Part VII of the amended complaint.

8. This defendant denies the allegations of Part VIII of the amended complaint.

Signed: Ernest H. Gilbert, Attorney for William T. Aldrich.

[fol. 40] Certificate of Service (omitted in printing).

[File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF NATALIE ALDRICH TO AMENDED COMPLAINT —Filed February 25, 1961

First Defense

The complaint fails to state a claim against this defendant upon which relief can be granted for the following reasons:

1. The claim of the plaintiff is predicated upon a foreign decree which is not enforceable in this action for the reasons that (1) it is contrary to West Virginia law, (2) it is not within the full faith and credit provisions of the Constitution of the United States and the Constitution of West [fol. 41] Virginia, and (3) even if otherwise valid, it cannot operate in rem upon land in West Virginia.

2. The statements contained in paragraph three of Part VI of the complaint are too vague and uncertain to constitute a sufficient allegation of forgery or other fraud.

Second Defense

The right of action, if any, set forth in the complaint against this defendant did not accrue within five years next before the commencement of this action.

Third Defense

This defendant admits, as alleged in the last paragraph of Part VI of the complaint that she is the wife of William T. Aldrich; and alleges that she is without knowledge or information sufficient to form a belief as to the truth of the other allegations of the complaint.

Signed: Ernest H. Gilbert, Attorney for Natalie Aldrich.

Certificate of Service (omitted in printing).

[fol. 42] [File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF M. S. ALDRICH & ASSOCIATES, INC., TO AMENDED COMPLAINT—Filed February 25, 1961

First Defense

The complaint fails to state a claim against this defendant upon which relief can be granted for the following reasons:

1. The claim of the plaintiff is predicated upon a foreign decree which is not enforceable in this action for the reasons that (1) it is contrary to West Virginia law, and (2) it is not within the full faith and credit provisions of the Constitution of West Virginia.

[fol. 43]

Second Defense

1. This defendant admits that for a period of years M. S. Aldrich was its president and chief executive officer, and as such was paid a salary; and that from about June 1, 1955, until April 1, 1958, W. T. Aldrich was its president and chief executive officer, and was paid a salary.

2. This defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Parts I, II, III, VI, VII and VIII of the amended complaint.

3. This defendant denies each and every other allegation contained in the complaint.

Signed: Ernest H. Gilbert, Attorney for M. S. Aldrich & Associates, Inc.

Certificate of Service (omitted in printing).

[fol. 44] [File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF ALDRICH-SLICER COMPANY TO AMENDED COMPLAINT—Filed February 25, 1961

First Defense

The complainant fails to state a claim against this defendant upon which relief can be granted for the following reasons:

1. The claim of the plaintiff is predicated upon a foreign decree which is not enforceable in this action for the reasons that (1) it is contrary to West Virginia law, and (2) it is not within the full faith and credit provisions of the Constitution of the United States and the Constitution of West Virginia.

Second Defense

1. This defendant admits that it is a corporation chartered under the laws of the State of West Virginia on April 8, 1958, and that William T. Aldrich was one of its incor- [fol. 45] porators and has been its president, chief executive officer and a principal stockholder since its incorporation.

2. This defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Parts I, II, III, IV, VI, VII and VIII of the amended complaint.

3. This defendant denies each and every other allegation contained in the complaint.

Signed: Ernest H. Gilbert, Attorney for Aldrich-Slicer Company.

Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 46]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF JOHN C. WHITE, EXECUTOR OF THE ESTATE OF M. S. ALDRICH, DECEASED TO AMENDED COMPLAINT—Filed March 7, 1961

To the Honorable James Lee Thompson, Judge of said Court:

I

Your defendant takes note of the fact that with one exception, namely Paragraph VI, the numbered allegations in the Amended Complaint are exactly or essentially the same as the allegations contained in the Original Complaint filed by the plaintiff herein, for which reason your defendant's Answer to that extent would necessariiy remain unchanged.

II

Your defendant for answer to the allegation contained in Paragraph VI of the Amended Complaint neither admits nor denies said allegation as he is without information as to the matters contained therein.

III

For answer to the Prayer of said Amended Complaint your defendant states, as was done with regard to the [fol. 47] Original Complaint, that the various sections of said Prayer numbered from (1) to (11) have no apparent reference to this defendant and therefore can be neither admitted nor denied.

IV

Your defendant renews by referral the same general answer to the Amended Complaint as was made in his answer to the Original Complaint.

V

Your defendant renews by referral the same Prayer of the Amended Complaint was made in his answer to the Original Complaint.

John C. White, Executor of the Estate of M. S. Aldrich, deceased.

Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 48]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

NOTICE OF AND MOTION FOR JUDGMENT ON THE PLEADINGS—Filed June 16, 1961

The pleadings herein having been closed, the defendants William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., a corporation, and Aldrich-Slicer Company, a corporation, jointly and severally move the Court for a judgment on the pleadings in favor of said defendants upon the ground that on the undisputed facts appearing from the pleadings, said defendants, and each of them, are entitled to judgment as a matter of law.

Signed: Ernest H. Gilbert, Attorney for Defendants.

NOTICE OF MOTION

To: Herman D. Rollins
Attorney for Plaintiff
305 Davidson Building
Charleston, West Virginia

Please take notice that the undersigned will bring the above motion on for hearing before this Court on the 25th

[fol. 49] day of June, 1961, at 9:30 a. m., Eastern Standard Time, or as soon thereafter as counsel may be heard.

Signed: Ernest H. Gilbert, Attorney for Defendants.

Certificate of service (omitted in printing).

[File endorsement omitted]

In Circuit Court of Putnam County, West Virginia

Stipulation of Counsel—Filed August 1, 1961

The following is stipulated by H. D. Rollins, attorney for Margaret Loretta Aldrich; Ernest H. Gilbert, attorney for [fol. 50] William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company, a corporation; and John C. White, attorney for John C. White, executor of the Estate of M. S. Aldrich, deceased.

1. M. S. Aldrich owed no alimony to Marguerite Loretta Aldrich at the time of his death on May 29, 1958, he having paid her until the first day of June of that year.

2. There was no fraud either actual or constructive in the conveyance of the parcel of land in controversy by M. S. Aldrich and Marguerite Loretta Aldrich to Edwin M. Aldrich on April 22, 1942.

It is understood that this stipulation may be filed and made a part of the record in this action.

Given under our hand this 31st day of July, 1961.

H. D. Rollins, Attorney for Marguerite Loretta Aldrich.

Ernest H. Gilbert, Attorney for William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company, a Corporation.

John C. White, Attorney for John C. White, Executor of the Estate of M. S. Aldrich, Deceased.

[File endorsement omitted]

[fol. 51]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

MARGUERITE LORETTA ALDRICH, Plaintiff,

v.

WILLIAM T. ALDRICH, ET AL., Defendants.

JUDGMENT—August 2, 1961

This action came on to be heard on motion for judgment on the pleadings made by the defendants William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company; upon stipulation of counsel for the plaintiff, counsel for the defendants William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company, and the defendant John C. White, as Executor of the estate of M. S. Aldrich, deceased; and upon written notes of argument, and arguments of counsel.

Upon consideration of the foregoing the Court hereby finds:

1. The late M. S. Aldrich had paid, during his lifetime, all alimony owing to the plaintiff, Marguerite Loretta Aldrich, pursuant to the decree of the Circuit Court of Dade County, Florida, described and set forth in Exhibits A and B of the bill of complaint filed herein, from the effective dates of said decrees until May 29, 1958, the date of the death of said M. S. Aldrich.

2. The aforesaid decrees of the Circuit Court of Dade County, Florida, to the extent that they attempt to impose upon the estate of the late M. S. Aldrich the duty and obligation to pay alimony accruing after his death, are invalid and unenforceable.

[fol. 52] 3. There was no fraud, actual or constructive, in the execution and delivery by M. S. Aldrich and Marguerite Loretta Aldrich of the deed dated April 22, 1942, described and set forth in Exhibit D of the amended bill

of complaint filed herein, conveying certain land in Putnam County, West Virginia, to Edwin M. Aldrich.

Wherefore, it appearing to the Court that the defendants Natalie Aldrich, William T. Aldrich, M. S. Aldrich & Associates, Inc., a corporation, Aldrich-Slicer Company, a corporation, and John C. White, as Executor of the estate of M. S. Aldrich, deceased, are entitled to judgment in their favor, and in favor of each of them, on the undisputed facts appearing in the pleadings and in the stipulation of counsel filed herein, it is Ordered and Adjudged that the complaint be and it is hereby dismissed, with prejudice, and that the defendants recover of the plaintiffs their respective costs of action. To which counsel for the plaintiff objects and excepts.

Dated: August 2, 1961.

James Lee Thompson, Judge.

Submitted By:

Ernest H. Gilbert, Attorney for the Defendants, William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company.

Inspected By:

H. D. Rollins, Attorney for Plaintiff.

[fol. 53]
Approved By:

John C. White, Attorney for the Defendant John C. White, as Executor of the estate of M. S. Aldrich, deceased.

[Filed endorsement omitted]

JUDGE'S CERTIFICATE

State of West Virginia,
County of Putnam, to-wit:

And the Court hereby certifies that the foregoing transcript contains all of the evidence introduced by stipulation of counsel and the proceedings had on the trial of this cause, as designated by counsel.

Teste: This 1st day of November, 1961.

James Lee Thompson, Judge of the Circuit Court of Putnam County, West Virginia.

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 55]

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

No. 12139

MARGUERITE LORETTA ALDRICH, Plaintiff Below, Appellant,

vs.

WILLIAM T. ALDRICH, ET AL., Defendants Below, Appellees.

MINUTE ENTRY RE ORDER ALLOWING APPEAL—
October 16, 1961

On a former day, to-wit, August 22, 1961, came the petitioner, Marguerite Loretta Aldrich, by H. D. Rollins, her attorney, and presented to the Court her petition praying for an appeal from a judgment of the Circuit Court of Putnam County rendered in this action on the 2nd day of August, 1961, with the record therein accompanying the petition, and note of argument in support thereof, which being seen and inspected by the Court the appeal prayed for is granted, but it is not to take effect until the petitioner, or some person for her, shall have given before the Clerk of the Circuit Court of Putnam County bond with good personal security in the penalty of Two Hundred Dollars, conditioned according to law.

[fol. 56]

IN SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
April 24, 1962

Upon an appeal from a judgment of the Circuit Court of Putnam County, rendered on the 2nd day of August, 1961.

This day came the appellant, Marguerite Loretta Aldrich, by H. D. Rollins, her attorney, and the appellees, William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company, by Ernest H. Gilbert, their attorneys, and this action was fully heard upon the transcript of the record herein and the argument and briefs of counsel thereon, and is submitted for decision.

[fol. 57]

IN SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA

12139

MARGUERITE LORETTA ALDRICH, Plaintiff Below, Appellant,

vs.

WILLIAM T. ALDRICH, ET AL., Defendants Below, Appellees.

JUDGMENT—July 6, 1962

Upon an appeal from a judgment of the Circuit Court of Putnam County, rendered on the 2nd day of August, 1961.

The Court, having maturely considered the transcript of the record herein and the argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that there is no error in the judgment complained of. It is therefore considered and ordered by

the Court that the judgment of the Circuit Court of Putnam County rendered in this action on the 2nd day of August, 1961, be, and the same is hereby affirmed, and that the appellees do recover of and from the appellant their costs about their defense in this Court in this behalf expended, and Thirty Dollars damages: all of which is ordered to be certified to the Circuit Court of Putnam County.

The syllabus of points adjudicated, prefixed to the written opinion prepared by Judge Haymond, was concurred in by Judges Browning and Berry. Judge Calhoun dissents and files a dissenting opinion. Judge Given did not participate in the decision of this case.

[fol. 58] [File endorsement omitted]

Judge Given did not participate in the decision of this case.

Judge Calhoun dissents and files a dissenting opinion.

IN SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA

No. 12139

MARGUERITE LORETTA ALDRICH,

v.

WILLIAM T. ALDRICH, ET AL.

Putnam County Affirmed

OPINION—July 6, 1962

Haymond, Judge

1. A valid judgment of a court of another state is entitled to full faith and credit in the courts of this state.

2. By virtue of the full faith and credit clause, Article IV, Section 1, of the Constitution of the United States, a

judgment of a court of another state has the same force and effect in this state as it has in the state in which it was pronounced.

3. To maintain an action in one state on a foreign judgment or decree, it is necessary that the judgment or decree be a valid personal and final adjudication which is in full force and virtue in the jurisdiction where it was rendered [fol. 59] and be capable of enforcement there by final process and the adjudication must have been rendered by a court which had jurisdiction of the parties and of the subject matter.

4. In an action on a judgment of another state the validity of the judgment is determined by the law of the jurisdiction in which the judgment was recovered.

5. A judgment rendered by a court of another state or by a court of this state is subject to attack for lack of jurisdiction to render such judgment or for fraud in its procurement.

6. When a judgment or decree of a court of another state is sought to be enforced in a court of this state, the court in this state may inquire into the jurisdiction of the court which rendered the judgment or decree, and if it appears that such court had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, the judgment or decree is binding in this state.

7. A void judgment, being a nullity, may be attacked collaterally, or directly, at any time and in any court whenever any claim or right is asserted under such judgment.

8. The jurisdiction to entertain suits for divorce exists only by virtue of statute which confers such jurisdiction.

[fol. 60] 9. The Florida statute authorizing an award of permanent alimony in a decree of divorce does not authorize or empower a court of that state to award alimony to continue beyond the life of the husband.

10. In the divorce proceeding between the plaintiff and her husband, the Circuit Court of Dade County, Florida, had jurisdiction of the parties and of the subject matter of the

controversy and had the power to render a judgment dissolving the marriage between the parties; but, in the absence of any agreement between the parties, that court did not have jurisdiction to award alimony to extend beyond the death of the husband and to make such alimony a charge against his estate. For that reason the judgment awarding such alimony was void and of no force and effect under the law of the State of Florida and will not be given full faith and credit in the courts of this state.

[fol. 61] HAYMOND, Judge:

In this civil action instituted in the Circuit Court of Putnam County, in which the defendants are William T. Aldrich, son of M. S. Aldrich, deceased, Natalie Aldrich, wife of William T. Aldrich, M. S. Aldrich & Associates, Inc., Aldrich-Slicer Company, a corporation, assets in which corporations were formerly owned by M. S. Aldrich, and John C. White, Executor of the will of M. S. Aldrich, deceased, the plaintiff, Marguerite Loretta Aldrich, divorced wife of M. S. Aldrich, deceased, seeks to enforce the collection, against the estate of M. S. Aldrich, deceased, and certain property now owned by William T. Aldrich, and certain assets formerly owned by M. S. Aldrich and now held by William T. Aldrich, or M. S. Aldrich & Associates, Inc., or Aldrich-Slicer Company, of a certain decree for alimony at the rate of $215.00 per month awarded the plaintiff in a certain divorce suit formerly pending in the Circuit Court of Dade County, Florida. By final order entered August 2, 1961, the Circuit Court of Putnam County, upon the undisputed facts appearing in the pleadings, which consisted of the amended complaint of the plaintiff and its exhibits and the separate answers of each of the defendants, and in the stipulation of counsel, found that the defendants were entitled to judgment in their favor and rendered judgment of dismissal of the plaintiff's amended complaint, with prejudice, and awarded costs in [fol. 62] favor of the defendants. From that judgment this Court granted this appeal upon the petition of the plaintiff.

In a suit for divorce instituted by the plaintiff Marguerite Loretta Aldrich against her husband M. S. Aldrich

in the Circuit Court of Dade County, Florida, by final decree entered June 1, 1945, that court granted the plaintiff Marguerite Loretta Aldrich an absolute divorce from her husband M. S. Aldrich. The divorce decree contained, among other provisions which are not here material, this provision concerning alimony for the wife: "That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00 as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court at Miami, Dade County, Florida, and in the event the defendant, Moriel Simeon Aldrich shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto; * * *." By a subsequent decree in the same suit entered June 25, 1946, the amount of the alimony was reduced from the sum of $250.00 per month to the sum of $215.00 per month from and after that date. M. S. Aldrich paid the monthly award of $215.00 in full until his death, which occurred May 29, 1958. M. S. [fol. 63] Aldrich, who was survived by his second wife, Angela Aldrich, died testate while a resident of Putnam County, and under his last will and testament, which was duly probated, his son, the defendant William T. Aldrich, and his second wife, Angela Aldrich, are the sole beneficiaries of his estate.

The defendant John C. White was named and has qualified as executor of the estate, which is now in process of administration, and the assets of the estate according to the appraisement filed with the amended complaint, consisting of personal property and a small undivided interest in real estate, amount to a total of $7,283.50, which is less than the amount of the unpaid alimony which has accrued under the divorce decree from the death of M. S. Aldrich to the date of the institution of this action.

M. S. Aldrich owned a parcel of land containing about ten acres in Putnam County which was conveyed to him by C. B. Hildreth. On April 22, 1942, he made a deed for

that land to his son Edwin M. Aldrich, who at that time was under the age of twenty one years and a cadet at West Point. The plaintiff, as the wife of M. S. Aldrich, joined in and signed and acknowledged that deed. On November 15, 1946, Edwin M. Aldrich and Marge Taylor Aldrich, his wife, conveyed the same property to William [fol. 64] T. Aldrich, another son of M. S. Aldrich and one of the defendants in this case. Notwithstanding these conveyances M. S. Aldrich continued to occupy this land as his home until his death. M. S. Aldrich, who owned assets in M. S. Aldrich & Associates, Inc. and Aldrich-Slicer Company, also transferred his interest and control in these corporations to his son William T. Aldrich.

The plaintiff charges that the conveyance by M. S. Aldrich, in which she joined as his wife, to Edwin M. Aldrich, of the residence property of M. S. Aldrich was without consideration and that the transfer of assets in the two corporations which M. S. Aldrich formerly owned and controlled was also without consideration, and that the land and those assets, as well as the assets of the estate of M. S. Aldrich, are subject to the judgment of the Circuit Court of Dade County, Florida, for alimony which has accrued and which has been unpaid since the death of M. S. Aldrich.

The plaintiff contends that the judgment of the Circuit Court of Dade County, Florida, which awards the plaintiff alimony at the rate of $215.00 per month during her lifetime and which makes alimony which accrues after the death of M. S. Aldrich a charge upon his estate, is a valid judgment of another state and as such is entitled to full faith and credit in this state and is enforceable against [fol. 65] the assets of the estate of M. S. Aldrich and the real estate and other assets formerly owned by him which have been transferred to and are now held by his son, the defendant William T. Aldrich.

On the contrary the defendants contend, in substance, that the Circuit Court of Dade County, Florida, was without jurisdiction to award alimony against the defendant M. S. Aldrich which would be valid and enforceable against his estate after his death; that the decree of the Florida

court is not enforceable in this action for the reason that it is contrary to the laws of this state and is not within the full faith and credit provisions of the Constitution of the United States and that, even if it should be held to be a valid judgment, it is not enforceable against the property and assets formerly held by M. S. Aldrich and now held by the defendant William T. Aldrich or M. S. Aldrich & Associates, Inc., or Aldrich-Slicer Company, for the reason that the claim of the plaintiff against such property and assets is barred by limitations.

The controlling question for decision is whether the judgment of the Circuit Court of Dade County, Florida, to the extent that it awards alimony to accrue after the death of M. S. Aldrich and makes the alimony so accruing a charge upon his estate, is a valid judgment which is entitled to full faith and credit in the courts of this state; for if such judgment is not entitled to such full faith and [fol. 66] credit the question of its enforcibility against the property and assets formerly owned by M. S. Aldrich becomes unimportant and need not be considered or discussed.

This Court has held in many cases that under Article IV, Section 1, of the Constitution of the United States, a valid judgment of a court of another state is entitled to full faith and credit in the courts of this state. *Gavenda Brothers, Inc.* v. *Elkins Limestone Company, Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; *Gardner* v. *Gardner*, 144 W. Va. 630, 110 S. E. 2d 495; *Consumers Credit Company of Waynesburg* v. *Bowers*, 143 W. Va. 748, 104 S. E. 2d 869; *Bennett* v. *Bennett*, 137 W.Va. 179, 70 S.E. 2d 894; *Paull* v. *Cook*, 135 W. Va. 833, 65 S. E. 2d 750; *Pukas* v. *Pukas*, 129 W.Va. 765, 42 S. E. 2d 11; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795; *International Harvester Company of America* v. *Solazo*, 116 W. Va. 34, 178 S. E. 429; *Campbell* v. *Switzer*, 74 W. Va. 509, 82 S. E. 319; *Roller* v. *Murray*, 71 W. Va. 161, 76 S. E. 172, L.R.A. 1915F, 984, 32 Ann. Cas. 1914B, 1139; *Crumlish's Administrator* v. *Central Improvement Company*, 38 W. Va. 390, 18 S. E. 456, 23 L.R.A. 120, 45 Am. St. Rep. 872; *Stewart* v. *Stewart*, 27 W. Va. 167; *Gilchrist* v. *West Virginia Oil and Oil Land Com-*

pany, 21 W. Va. 115, 45 Am. Rep. 555; *Coleman* v. *Waters*, 13 W. Va. 278. It is also well established that by virtue of the full faith and credit clause, Article IV, Section 1, of the Constitution of the United States a judgment of a court of another state has the same force and effect in this state as it has in the state in which it was pronounced. 2 Black on Judgments, second edition, 1902, Chapter 22, [fol. 67] Section 861; 30A Am. Jur., Judgments, Section 237; *Campbell* v. *Switzer*, 74 W. Va. 509, 82 S. E. 319; *Roller* v. *Murray*, 71 W. Va. 161, 76 S. E. 172, L.R.A. 1915F, 984, 32 Ann. Cas. 1914B, 1139; *Wells-Stone Mercantile Company* v. *Truax*, 44 W. Va. 531, 29 S. E. 1006; *Crumlish's Administrator* v. *Central Improvement Company*, 38 W. Va. 390, 18 S. E. 456, 23 L.R.A. 120, 45 Am. St. Rep. 872; *Stewart* v. *Stewart*, 27 W. Va. 167; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555; *Bla* v. *Smith*, 13 W. Va. 780; *Thompson* v. *Thompson*, 226 U. S. 551, 33 S. Ct. 129, 57 L. Ed. 347; *Barber* v. *Barber*, 62 U. S. (21 How.) 582, 16 L. Ed. 226; *Babcock* v. *Babcock*, 147 Misc. 900, 265 N.Y.S. 470; *Picker* v. *Vollenhover*, 206 Or. 45, 290 P. 2d 789; *Van Natta* v. *Van Natta*, Court of Civil Appeals of Texas, 200 S. W. 907.

In 2 Black on Judgments, second edition, 1902, Chapter 22, Section 861, discussing the effect to be given to a judgment of another state, the author quotes this language from *Wood* v. *Watkinson*, 17 Conn. 500, 44 Am. Dec. 562: "* * * it is well settled, that no greater effect is to be given to it than it would have in the state where it was rendered. It has no higher dignity in any other state than in the one where it was pronounced; and hence, if in the courts of the state where the judgment was rendered, it is inconclusive, or if it is inquirable into there, during a particular period, or on certain conditions, it will be open to investigation, to the same extent, every where else. * * *. [fol. 68] It results conclusively from this principle, or is rather involved in it, that if a judgment in a state where it is recovered, has not the effect of binding personally the defendants, or any of them, in the suit in which it was rendered, no greater effect will be given to it in any other state where it is endeavoured to be enforced. It derives

its obligation only from the laws of the state in which it is pronounced." To maintain an action in one state on a foreign judgment or decree, it is necessary that the judgment or decree be a valid personal and final adjudication which is in full force and virtue in the jurisdiction where it was rendered and be capable of enforcement there by final process and the adjudication must have been rendered by a court which had jurisdiction of the parties and of the subject matter. 50 C.J.S., Judgments, Section 868. In an action on a judgment of another state the validity of the judgment is determined by the law of the jurisdiction in which the judgment was recovered. 50 C.J.S., Judgments, Section 869. A judgment rendered by a court of another state or by a court of this state is subject to attack for lack of jurisdiction to render such judgment or for fraud in its procurement. *Gavenda Brothers, Inc.* v. *Elkins Limestone Company, Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; *Gardner* v. *Gardner*, 144 W. Va. 630, 110 S. E. 2d 495; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Stephenson* v. *Ashburn*, 137 W. Va. 141, 70 S. E. 2d 585; *Cable* v. *Cable*, 132 W. Va. 620, 53 S. E. 2d 637; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795; *Caswell* v. *Caswell*, 84 W. Va. 575, 100 S. E. 482; *Turner* v. *Stewart*, 51 W. Va. [fol. 69] 493, 41 S. E. 924; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555.

When a judgment or decree of a court of another state is sought to be enforced in a court in this state, the court in this state may inquire into the jurisdiction of the court which rendered the judgment or decree, and if it appears that such court had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, the judgment or decree is binding in this state. Point 3, syllabus, *Stewart* v. *Stewart*, 27 W. Va. 167; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795; *Citizens National Bank* v. *Consolidated Glass Company*, 83 W. Va. 1, 97 S. E. 689; *Stewart* v. *Northern Assurance Company*, 45 W. Va. 734, 32 S. E. 218, 44 L.R.A. 101; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555; *Milliken* v. *Meyer, Administratrix*, 311 U. S. 457, 61 S. Ct. 339, 85 L. Ed. 278, 132 A.L.R. 1357, rehearing denied, 312 U. S.

712, 61 S. Ct. 548, 85 L. Ed. 1143; *Fauntleroy* v. *Lum*, 210 U.S. 230, 28 S. Ct. 641, 52 L. Ed. 1039; *Simmons* v. *Saul*, 138 U. S. 439, 11 S. Ct. 369, 34 L. Ed. 1054; *Thompson* v. *Whitman*, 85 U. S. (18 Wall.) 457, 21 L. Ed. 897; *Kelley* v. *Kelley*, 161 Mass. 111, 36 N. E. 837; 30A, Am. Jur., Judgments, Section 261.

This Court has held in many cases that a void judgment, being a nullity, may be attacked collaterally, or directly, at any time and in any court whenever any claim [fol. 70] or right is asserted under such judgment. *Gavenda Brothers, Inc.* v. *Elkins Limestone Company, Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; *State ex rel. Cecil* v. *Knapp*, 143 W. Va. 896, 105 S. E. 2d 569; *State ex rel. Leeber and Covey* v. *The Board of Education of The County of Raleigh*, 143 W. Va. 584, 103 S. E. 2d 797; *State ex rel. Browning* v. *Tucker*, 142 W. Va. 830, 98 S. E. 2d 740; *State ex rel. Vance* v. *Arthur*, 142 W. Va. 737, 98 S. E. 2d 418; *State ex rel. Lovejoy* v. *Skeen*, 138 W. Va. 901, 78 S. E. 2d 456, certiorari denied, 349 U. S. 940, 75 S. Ct. 786, 99 L. Ed. 1268; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Stephenson* v. *Ashburn*, 137 W. Va. 141, 70 S. E. 2d 585, and many other cases cited in the opinion in the *Gavenda Brothers* case.

In the light of the foregoing well established legal principles in considering whether the judgment, entered by the Circuit Court of Dade County, Florida, awarding alimony to extend beyond the death of M. S. Aldrich and making such alimony a charge against his estate, may be enforced in this state, it is necessary to determine whether those provisions of the judgment are valid under the law of the State of Florida.

In support of her contention that such decree is valid under the law of the State of Florida, the plaintiff cites and relies upon *Johnson* v. *Every*, Fla. 1957, 93 So. 2d 390. In that case the Circuit Court of Dade County, Florida, entered a decree of divorce in favor of the wife [fol. 71] Beulah V. Johnson against her husband James Nelson Johnson. The decree awarded the wife the sum of twenty five dollars per week for her support and maintenance and provided that the payment of that amount

should cease upon the death of the plaintiff or upon her remarriage to any person other than the defendant. Prior to the divorce proceedings the parties had entered into a property settlement by which the husband agreed that the payments should only be terminated by the death of the wife or her remarriage to a person other than the husband. After the death of the husband the wife sought, in a proceeding against the administrator of the estate of the deceased former husband, to compel the payment of alimony in accordance with the decree of divorce. The Supreme Court of Florida in a four to three decision held that where under property settlement agreement and divorce decree it was provided that weekly payments to the wife were to be terminated only by the death of the wife or her remarriage to a person other than her husband, the husband's liability for such payments did not terminate at his death and that his estate was liable for such payments during the life of his former wife. The majority opinion in that case contains these paragraphs:

"We subscribe to the proposition that in the absence of an express contract or a provision in a decree such as the one before us, a divorced husband's liability for alimony [fol. 72] terminates with his death. On the other hand, where the decree or property settlement agreement expressly provides for the continuance of the payments 'until the death of the wife' then the husband's estate remains liable for the obligation in the same manner as it is liable for any other legitimate obligation outstanding at the time of his death. Here there was a provision in the final decree as well as in the property settlement arrangement to the effect that the payments would be made during the life of the wife or until she remarried. She is still living and she has not remarried, and consequently, the conditions for the termination of the weekly payments have not occurred.

"This was in effect a part of our holding in *Underwood* v. *Underwood*, Fla. 1953, 64 So. 2d 281; and *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, 238. In the case last cited, we held: '* * * As a general rule the obligation to pay alimony dies with the person, but agreements of the hus-

band to bind his representatives to do this have been upheld, and there is no prohibition against them in this state.'

"The rule stated appears to be applicable to the situation in the case at bar."

It is clear from the majority opinion in the *Johnson* case, and particularly from the above quoted paragraphs, that the holding that the estate of the husband was liable for alimony accruing after his death and during the life of his former wife was based and depended entirely upon [fol. 73] the agreement by which the husband incurred that obligation, and that in the absence of such agreement an award of alimony would not continue after but would terminate at the death of the husband. It is true that the court said " * * * in the absence of an express contract *or* a provision *in a decree such as the one before us*, a divorced husband's liability for alimony terminates with his death." (Italics supplied). Though this language is disjunctive in form, it is evident that the reference to the decree "such as the one before" the court meant a decree based upon a contract. Such meaning is also indicated by the quotation from *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, that "As a general rule the obligation to pay alimony dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state."; and by the statement that the rule stated in the immediately preceding quotation "appears to be applicable to the situation in the case at bar."

That the validity of the award of alimony to continue beyond the death of the husband in the *Johnson* case was based upon and resulted solely from the agreement is also indicated by the dissenting opinion of three of the justices who would have held the award invalid because it did not appear to them from the agreement between the parties that the parties intended the payments to extend beyond the death of the husband and to be binding upon his estate. [fol. 74] The dissenting opinion contains, among others, these paragraphs:

"In the instant case, the agreement does not clearly disclose that the wife released a valuable property right nor that she had any special equity in her husband's business or property. Construing the language used in the agreement and the decree in accordance with its usual meaning, it appears that the weekly payments were intended as 'alimony' in its strictest sense, meaning 'nourishment' or 'sustenance,' arising out of the husband's common-law obligation to support his wife and child. Cf. *Jacobs* v. *Jacobs*, Fla. 1951, 50 So. 2d 169. This being so, we will not infer that the parties and the court intended the payments to extend beyond the death of the husband and to be binding upon his estate, as against the general rule that such payments cease upon his death."; and

"We do not decide, since the question is not presented, whether an award of this type of 'pure' alimony could be made by the court to extend beyond the lifetime of the husband, in the absence of an agreement of the parties to that effect. There is no statute in this state so providing; and it has been said that 'generally such power is considered as not existent, in the absence of any statute or agreement between the parties.' See the statement of the annotator in 39 A.L.R. 2d at page 1409, and cases cited."

The conclusion of this Court that the validity of the award of alimony as determined in the *Johnson* case was due to [fol. 75] and was based solely upon the contract between the parties is also supported by the pronouncements of courts which have considered the effect of the decision in that case. In *Gessler* v. *Gessler*, 273 F. 2d 302, in giving effect to a separation agreement between the husband and the wife which by its express terms was binding upon the parties and their heirs, executors and administrators, and by which the husband provided for the support of his minor children and that payment for such support be made to their mother, and which contract was held to be valid and enforceable against the estate of the deceased husband, the United States Court of Appeals, Fifth Circuit, used this language: "The facts here are analogous to the facts in *Johnson* v. *Every*, Fla. 1957, 93 So. 2d 390. In that case there was a divorce and a property settlement agreement requiring the husband to make weekly payments to the wife

to be terminated only by her death or remarriage. The court held that the husband's estate was liable for the payments in accordance with the separation agreement." A similar view of that case was expressed by the District Court of Appeal of Florida, Third District, in *Deigaard* v. *Deigaard*, Fla. 1959, 114 So. 2d 516, a divorce suit in which a decree of the trial chancellor provided that if the defendant husband should die prior to the remarriage or the death of the wife, the wife should have a claim against the estate of the husband in the amount of $5,000.00 in lieu of post-demise alimony. In reversing and holding invalid that provision of the decree the District Court of Appeal [fol. 76] said: "In addition, a divorced husband's liability for alimony generally terminates with his death. There was no expressed contract or agreement between the parties that alimony should continue beyond the life of the husband, and in the absence of statutory authority, we conclude that the decree in this respect is without legal basis. See *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237; *Underwood* v. *Underwood*, Fla., 1953, 64 So. 2d 281; *Johnson* v. *Every*, Fla., 1957, 93 So. 2d 390."

In *Underwood* v. *Underwood*, Fla., 1953, 64 So. 2d 281, and *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, cited by the court in the *Johnson* case, an award to the wife to continue after the death of the husband as a liability of his estate was upheld by the court upon the basis of a property settlement agreement between the husband and the wife; and those cases indicate clearly that in the absence of an agreement an award of alimony would not be valid after the death of the husband. In the *Underwood* case the opinion contains this language: "At the very outset we dispose of the legal effect of the use of the word 'alimony' in the agreement and decree. It is not what it is *called* but what it *is* that fixes its legal status. It is the *substance* and not the *form* which is controlling. In the case of *International Trust Co.* v. *Lichhardt*, 111 Colo. 208, 139 P. 264, 147 A.L.R. 700, the court held that the use of the word *alimony* was not conclusive and that it was substance and not form which [fol. 77] guided the court. So far as agreements of the kind under consideration is concerned, where periodic payments are to be made the wife for the period of her life and is not

limited to the joint lives of the parties, the legal effect of such payments are that they constitute property settlements and not alimony. By its very nature, alimony is limited to the lifetime of the husband. See *Spear* v. *Spear*, 158 Md. 672, 149 A. 468, from which we quote with approval in *Vance* v. *Vance*, *supra*; *Emerson* v. *Emerson*, 120 Md. 584, 87 A. 1033; *Newbold* v. *Newbold*, 133 Md. 170, 104 A. 366; *Dickey* v. *Dickey*, 154 Md. 675, 141 A. 387, 58 A.L.R. 634; *North* v. *North*, 339 Mo. 1226, 100 S. W. 2d 582, 109 A.L.R. 1061." And in its opinion in the *Allen* case the court said: "For all the record shows, the agreement brought in question was of the latter class, and, if so, it may be enforced. As a general rule the obligation to pay alimony dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state. 19 C. J. §279, §635, page 279; *Storey* v. *Storey*, 125 Ill. 608, 18 N. E. 329, 1 L.R.A. 320, 8 Am. St. Rep. 417; *Miller* v. *Miller*, 64 Me. 484; *Barnes* v. *Klug*, 129 App. Div. 192, 113 N.Y.S. 325; *Fleming* v. *Peterson*, 167 Ill. 465, 47 N. E. 755; *Wilson* v. *Hinman*, 182 N. Y. 408, 75 N. E. 236, 2 L.R.A. (N.S.) 232, 108 Am. St. Rep. 820."

This Court has recognized an agreement by the husband to pay alimony during the life of the wife and has held [fol. 78] that such payments extend beyond the death of the husband and are enforceable against his estate. *Jennings* v. *First National Bank of Williamson*, 116 W. Va. 409, 180 S. E. 772.

The principle is widely recognized by the decisions of many courts that the jurisdiction to entertain suits for divorce exists only by virtue of statute which confers such jurisdiction. In 27A, C.J.S., Divorce, Section 69, the text contains this language: "In general the power to grant a divorce is a statutory, and not a common-law, power, or, stated more broadly, jurisdiction of courts in divorce actions or proceedings is dependent on statute. A court has only such jurisdiction in divorce matters as the legislature has conferred or delegated by statute, and a power exercised by the court in such proceedings must be in the statute or it does not exist." In *McGowin* v. *McGowin*, 122 Fla. 394, 165 So. 274, the opinion contains these statements and

citations: "The power to grant a divorce is a statutory and not a common-law power. 19 C. J. 23; *Martin* v. *Martin*, 173 Ala. 106, 55 So. 632; *Herron* v. *Passailaique*, 92 Fla. 818, 110 So. 539, 542." See also *State ex rel. Cecil* v. *Knapp*, 143 W. Va. 896, 105 S. E. 2d 569.

The only provision of the statutes of Florida for the award of permanent alimony in a decree of divorce is Section 65.08, Fla. Stat. F.S.A., and is expressed in this language: "In any award of permanent alimony the court shall [fol. 79] have jurisdiction to order periodic payments or payment in a lump sum." That statute does not authorize or empower a court of that state to award alimony to continue beyond the life of a husband. *Deigaard* v. *Deigaard*, Fla. 1959, 114 So. 2d 516.

In Sections 2 and 3 of the Annotation in 39 A.L.R. 2d 1406, at pages 1408 and 1409, are these statements: "While there is little authority on the precise point, several cases indicate that, in the absence of any statute or agreement between the parties, the court has no power to extend alimony payments beyond the death of the person directed to pay."; and "The determination of whether the husband's death terminates his obligation to pay alimony to the divorced wife depends, first, upon whether the court has the power to provide in its decree that periodical payments for the support of the wife should continue despite the occurrence of such event. It would appear from the cases that generally such power is considered as not existent, in the absence of any statute or agreement between the parties."

In the divorce proceeding between the plaintiff and her husband M. S. Aldrich, the Circuit Court of Dade County, Florida, had jurisdiction of the subject matter of the controversy and of the parties and had the power to render a valid judgment dissolving the marriage between the parties, but, in the absence of any agreement between the parties, [fol. 80] and there was no such agreement, that court did not have jurisdiction to award alimony to extend beyond the death of the husband and to make such alimony a charge against his estate. For that reason the judgment awarding such alimony was void and of no force and effect under the law of the State of Florida in which such judgment was

rendered and will not be given full faith and credit in the courts of this state.

In *State ex rel. Vance* v. *Arthur*, 142 W. Va. 737, 98 S. E. 2d 418, this Court in its opinion quoted with approval this text from 11 Michie's Jurisprudence, Jurisdiction, Section 9: "If the court exceeds its jurisdiction over the subject matter, its decrees are nullities to that extent and may be impeached directly or collaterally by any persons, anywhere, at any time, or in any manner, and may be declared void by every court in which they are called in question. Want of jurisdiction affirmatively appearing on the face of the proceedings makes the judgment even of courts of general jurisdiction null, and they may be so treated by any court in any proceeding, direct or collateral."

A judgment may be valid in part and void in part. *State ex rel. Browning* v. *Tucker*, 142 W. Va. 830, 98 S. E. 2d 740; 30A Am. Jur., Judgments, Section 20. "If the judgment is in excess of that which the court rendering it had by law the power to pronounce, such judgment is void for the excess only." *Ex parte Mooney*, 26 W. Va. 36, 53 Am. Rep. 59; *Dye* v. *Skeen*, 135 W. Va. 90, 62 S. E. 2d 681, 24 A.L.R. 2d 1234. In *Flaxman* v. *Flaxman*, 169 Okla. 65, [fol. 81] 35 P. 2d 950, that court held that a decree granting a divorce and awarding alimony which the court was without power to award and enforce, was valid as to the divorce but void as to the alimony. See also *Oder* v. *Oder*, 149 Okla. 63, 299 P. 202. In *Ecton* v. *Tomlinson*, 278 Mo. 282, 212 S. W. 865, the court held that the jurisdiction of a court to award alimony being statutory, its judgment insofar as it awarded the wife specific personal property as alimony and extinguished her dower, was void. In the opinion that court said: "That the jurisdiction of courts in this state to hear and determine suits for divorce and alimony depends upon and is limited by the statutes is not now an open question. *Chapman* v. *Chapman*, 269 Mo. 663, 192 S. W. 448. Because of such limitations a court in an action for divorce cannot decree to a wife as a part or all of her alimony specific personal property of the husband. *Aylor* v. *Aylor*, 186 S. W. 1071. * * *. In an action for divorce where the court attempts to take into account, adjudicate and settle all questions of property rights, both present and

inchoate, between the parties, it is not in so doing merely erroneously exercising jurisdiction; it is proceeding wholly without jurisdiction. It follows, therefore, that its judgment in such respect is void. * * *. It is necessary that a court have jurisdiction, not only of the parties and the subject matter, but it must also have jurisdiction to render the particular judgment in the particular case. *State ex rel.* [fol. 82] *Muench*, 217 Mo. 124, 117 S. W. 25, 129 Am. St. Rep. 536; *Charles* v. *White*, 214 Mo. 187, 112 S. W. 545, 21 L.R.A. (N.S.) 481, 127 Am. St. Rep. 674." In *Edmondson* v. *Edmondson*, Mo. 1951, 242 S. W. 2d 730, the Kansas City Court of Appeals held that the court which granted a divorce and awarded alimony was without power to award installment payments to the wife for support and maintenance for the rest of her natural life regardless of marriage and to make them a charge upon the estate of the husband; that the portion of the judgment of divorce which purported to award alimony to the wife for the rest of her natural life was void; and that the validity of the remainder of the judgment dissolving the marriage was not affected.

Inasmuch as the judgment for alimony which has accrued since the death of M. S. Aldrich is not enforceable against his estate, the effect of the transfers of the property and assets formerly owned by him is not considered or discussed.

The judgment of the Circuit Court of Putnam County, being free from error, is affirmed.

Affirmed.

[fol. 83]

CALHOUN, President, dissenting:

I agree that the portion of the Florida decree which states that the alimony awarded shall "become a charge upon his estate during her lifetime" cannot have the effect of creating a "charge" in the sense of a lien, equitable or otherwise, upon the husband's real estate in this state. The decree was operative on the husband personally, but could not have the extra-territorial effect of creating a "charge" upon his real estate situated in West Virginia. *Wilson* v. *Braden*, 48 W. Va. 196, pt. 1 syl., 36 S. E. 367; *Woodcock* v. *Barrick and Yost*, 79 W. Va. 449, pt. 3 syl., 91 S. E. 396; *Tennant's*

Heirs v. *Fretts*, 67 W. Va. 569, 571, 68 S. E. 387, 388; 50 C.J.S., Judgments, Section 889, page 485.

To the extent, however, that the majority opinion undertakes to determine the mere incorrectness of the Florida court's judgment awarding alimony to be paid to the wife for her lifetime, I respectfully dissent.

Under Section 1, Article IV of the Constitution of the United States, a judgment of a court of another state must be accorded full faith and credit in the courts of this state. A judgment of a court of another state may be attacked in a court of this state only for fraud in its procurement or lack of jurisdiction in the court by which it was rendered. 50 C. J. S., Judgments, Section 889e, page 481. If there is any exception to the principles stated above, I have never [fol. 84] learned of it, though such fundamental principles have been adhered to and reaffirmed by this Court until this time in cases almost without number, some of the more recent ones being as follows: *Gavenda Brothers, Inc.* v. *Elkins Limestone Co.*, W. Va. , 116 S. E. 2d 910; *Gardner* v. *Gardner*, 144 W. Va. 630, 110 S. E. 2d 495; *Consumer Credit Co. of Waynesburg* v. *Bowers*, 143 W. Va. 748, 104 S. E. 2d 869; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Paull* v. *Cook*, 135 W. Va. 833, 65 S. E. 2d 750; *Pukas* v. *Pukas*, 129 W. Va. 765, 42 S. E. 2d 11; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795.

The only way a judgment or decree of a court in another state may be assailed in a court of this state is by showing that it is void. *Pukas* v. *Pukas*, 129 W. Va. 765, 770, 42 S. E. 2d 11, 13. "The only escape from obedience to the rule that a judgment of a sister state is entitled to full faith and credit lies in a holding that the judgment is void and entitled to no standing even in the state in which it was rendered." 30A Am. Jur., Judgments, Section 246, page 314. That is to say, it must appear that, because of a lack of jurisdiction of the person or of the subject matter, "the judgment or decree was void." *Adkins* v. *Adkins*, 142 W. Va. 646, pt. 3 syl., 97 S. E. 2d 789. "The judgment of a sister state must be given full faith and credit unless it is absolutely void." 30A Am. Jur., Judgments, Section 246, page 314.

Courts of this state "may not refuse to enforce a judgment of another state because it involves some contraven- [fol. 85] tion of the public policy of this state." *Paull* v. *Cook*, 135 W. Va. 833, pt. 5 syl., 65 S. E. 2d 750. "The judgment or decree of a court of a sister state, having jurisdiction of the parties and the subject matter of suit, is *res judicata* as to all matters determined thereby. The parties are estopped by such final judgment or decree from again litigating the same matters in a court of this state." *R. D. Johnson Milling Co.* v. *Read*, 76 W. Va. 557, pt. 13 syl., 85 S. E. 726. "A decree relating to alimony, support or maintenance, entered in a court of another state having jurisdiction of the parties and subject matter, is entitled to full faith and credit in the courts of this State." *Bennett* v. *Bennett*, 137 W. Va. 179, pt. 7 syl., 70 S. E. 2d 894. "The faith and credit given is not to be niggardly but generous, full." *Johnson* v. *Muelberger*, 340 U.S. 581, 95 L. Ed. 552, 71 S. Ct. 474.

The purpose and effect of the full faith and credit clause "are to extend the res judicata effect of a judgment from the state of its rendition to all other states." 50 C.J.S., Judgments, Section 888b, page 469; 30A Am. Jur., Judgments, Section 236, page 304.

"Thus, under the full faith and credit clause of the Constitution of the United States, a judgment rendered by a court of one state is, in the courts of another state of the Union, binding and conclusive as to the merits adjudicated. It is improper to permit an alteration, modification or reexamination of the judgment, or of the grounds on which it is based, or of the merits of the original cause of action. Thus, [fol. 86] jurisdiction to render the judgment having been established or being presumed, the full faith and credit clause precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment is based. Whatever mistake of law may underlie a judgment, it is, under the full faith and credit clause, conclusive as to all the media concludendi." 30A Am. Jur., Judgments, Section 239, pages 307-08. See also *Stewart* v. *Northern Assurance Co.*, 45 W. Va. 734, pt. 1 syl., 32 S. E. 218, 44 L.R.A. 101; *Paull* v. *Cook*, 135 W. Va. 833, 841, 65 S. E. 2d 750, 755; *Dry* v. *Rice*, 147 Va. 331, 137 S. E. 473.

A judgment of a court of a sister state is binding and conclusive upon the courts of this state "not only as to the matters actually determined, but as to every other matter which the parties might have litigated as incident thereto, and coming within the legitimate purview of the subject-matter of the action. * * * An erroneous ruling of the court will not prevent the matter from being *res judicata*." *Sayre's Admr.* v. *Harrold*, 33 W. Va. 553, pt. 1 syl., 11 S. E. 16.

The decree or judgment of a Florida court must be accorded by the courts of this state the same binding effect on the parties thereto as in the state where rendered. If the matter is one which cannot be again litigated there, it cannot be reexamined, relitigated or modified by this or any other court of this state. *Stewart* v. *Stewart*, 27 W. Va. 167, [fol. 87] pt. 4 syl. "An adjudication which precludes relitigation of a question in the state in which it took place may be pleaded in bar in a subsequent suit in another state between the same parties and in which the same matter is involved and decisive of the issue." *Roller* v. *Murray*, 71 W. Va. 161, pt. 3 syl., 76 S. E. 172, L.R.A. 1915F 984, Ann. Cas. 1914B 1139, App. Dism., 234 U.S. 738, 58 L. Ed. 1570, 34 S. Ct. 902. The judgment of a sister state "must have the same faith and credit here, as it had in the state where it was rendered." *Gilchrist* v. *Oil and Oil Land Co.*, 21 W. Va. 115, pt. 1 syl. "It is well settled that the judgment of a sister state must be accorded in this state the same faith and credit which it has in the state where rendered." *Crumlish's Admr.* v. *Central Improvement Co.*, 38 W. Va. 390, pt. 5 syl., 18 S. E. 456, 23 L.R.A. 120, 45 Am. St. Rep. 872; *Wells-Stone Mercantile Co.* v. *Truax*, 44 W. Va. 531, pt. 1 syl., 29 S. E. 1006; 50 C.J.S., Judgments, Section 889b, page 473.

A judgment of a sister state may not be challenged on the ground "that the basis of the action was tainted with fraud. That matter is foreclosed by the judgment." Only fraud "in the procurement" of the judgment may be considered. *International Harvester Co.* v. *Solaze*, 116 W. Va. 34, pts. 4 and 5 syl., 178 S. E. 429.

If the court which rendered the foreign judgment is a court of general jurisdiction "the presumption is, it had

jurisdiction of the particular case, and, to render the decree void, this presumption must be overcome by proof." [fol. 88] *Stewart* v. *Stewart*, 27 W. Va. 167, pt. 6 syl. There is no such presumption in relation to judgments of inferior courts, such as justices of the peace, but such judgments are, nevertheless, entitled to full faith and credit in courts of all other states. 50 C.J.S., Judgments, Section 896, page 513.

Respectable authority appears to support the proposition that the full faith and credit clause will forbid one to question the jurisdiction of the court to render a judgment in a case in which he appeared and participated as a litigant. *Davis* v. *Davis*, 305 U.S. 32, 83 L. Ed. 26, 59 S. Ct. 3; *Morrissey* v. *Morrissey*, 1 N.J. 448, 64 A. 2d 209, 12 A.L.R. 2d 378.

The legal question presented herein must not be confused with our statutory provision that the writ of prohibition shall lie when the inferior court lacks jurisdiction of the subject matter in controversy, "or, having such jurisdiction, exceeds its legitimate powers." Code, 53-1-1. My research fails to disclose any authority for the proposition that this court may refuse to give full faith and credit to the Florida judgment merely on the ground that that court, having jurisdiction, exceeded its legitimate powers. I believe all legal authorities leave the proposition unquestionable that it is not enough to show that the Florida judgment is merely erroneous or voidable. It must appear to be absolutely void, a nullity.

I believe also that the proposition is beyond question [fol. 89] that, if the Florida court had jurisdiction of the person and of the subject matter, including jurisdiction to award alimony, its judgment cannot be assailed by this Court by reason of anything the Florida court did, however erroneous and without legal authorization, in the exercise of that jurisdiction. I find in this case no basis whatsoever for asserting that the Florida court lacked jurisdiction of either the person or of the subject matter. The contrary appears beyond question. That being true, the judgment of that court cannot be questioned in the absence of a showing that the judgment was procured by fraud, and there is no contention of that nature.

We must be careful not to confuse jurisdiction with an improper or erroneous exercise of jurisdiction. The Florida court had jurisdiction of the subject matter and the parties, including jurisdiction to determine and fix alimony. Jurisdiction to decide all matters pertaining to alimony included jurisdiction to decree rightly as well as wrongly, correctly as well as incorrectly, lawfully as well as unlawfully. "The test of a court's jurisdiction is whether or not it had power to enter on the inquiry, not whether its conclusion in the course thereof was correct, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly." 21 C.J.S., Courts, Section 27, pages 38-39; *St. Lawrence Co.* v. *Bolt and Mathews*, 51 W. Va. 352, 41 S. E. 351; *Stewart* v. *Tennant*, 52 W. Va. 559, pt. 8 syl., 44 S. E. 223; *Adkins* v. *Adkins*, 142 W. Va. 646, 97 S. E. 2d 789; 11 M.J., Jurisdiction, Section 10, page 436.

[fol. 90] "Where a court has lawfully acquired jurisdiction of the parties and the subject matter of the litigation, subsequent departure by the court from the rules of law or procedure in the exercise of that jurisdiction is not jurisdictional error." *Blankenship* v. *Mongini*, 105 W. Va. 530, pt. 2 syl., 143 S. E. 301.

I believe that the legal principles referred to herein establish the fact that the majority opinion, without warrant in law or precedent and contrary to basic legal and constitutional principles, arrogates to this court the right to sit as a reviewing or appellate court in appraising and reexamining the mere correctness of the final judgment of a court of general jurisdiction in a sister state. The correctness of that judgment could not be collaterally challenged even in the State of Florida or in any other manner by any court, except by legally authorized appellate procedure, in the absence of a showing of fraud in the procurement of the judgment or lack of jurisdiction of the Florida court to pronounce it.

The decree pronounced by the Florida court is not contrary to the public policy of this state. I am not prepared to concede that the decree is erroneous either under the Florida law or the law of West Virginia. *Hale* v. *Hale*, 108 W. Va. 337, pt. 2 syl., 150 S. E. 748. If it is erroneous,

voidable, or in part unauthorized by law, that is a matter which an appropriate appellate court in Florida may determine; but this Court may not. But even if the decree were [fol. 91] contrary to the public policy of West Virginia, this Court, in accordance with authorities previously cited herein, would be required to accord such decretal judgment full faith and credit.

It is not correct to say, as does the majority opinion, that "jurisdiction" to grant alimony or support to a wife is dependent solely on divorce statutes. It is true that jurisdiction to grant a divorce is wholly a creature of statute and did not exist at common law. *State ex rel. Hammond* v. *Morrell*, 144 W. Va. 83, 106 S. E. 2d 521. The validity of the Florida divorce, however, is not in question. But on the contrary, courts of equity independently of statutes pertaining to alimony, separate maintenance or otherwise, have jurisdiction to entertain suits for alimony, separate maintenance, or to compel a husband to support his wife. Alimony is not a mere creature of statute. *Lieberman* v. *Lieberman*, 142 W. Va. 716, 724, 98 S. E. 2d 275, 281; *Snyder* v. *Lane*, 141 W. Va. 195, 89 S. E. 2d 607; *Davis* v. *Davis*, 137 W. Va. 213, 70 S. E. 2d 889; *Wolford* v. *Wolford*, 133 W. Va. 403, 56 S. E. 2d 614; *Dailey* v. *Brennan*, 123 W. Va. 261, 14 S. E. 2d 617. "A court of equity, independently of proceedings for divorce, on the ground of inadequate remedy at law, may decree maintenance to a wife who has been deserted by her husband." *Lang* v. *Lang*, 70 W. Va. 205, pt. 1 syl., 73 S. E. 716, 38 L.R.A. (N.S.) 950, which case was decided prior to the enactment of our statutes providing for suits for separate maintenance. "Alimony is not merely an incident of divorce; it is a substantive right, which may be decreed to any wife under a [fol. 92] given state of facts. This inherited power of equity courts, independent of any statutes, still exists and may be enforced in a suit brought for that purpose alone." *White* v. *White*, 181 Va. 162, 168, 24 S. E. 2d 448, 451. See also *Dray* v. *Landcraren*, 161 Va. 699, 172 S. E. 252; *Heflin* v. *Heflin*, 177 Va. 385, 14 S. E. 2d 317, 141 A.L.R. 391; *Wilson* v. *Wilson*, 178 Va. 427, 17 S. E. 2d 397. "According to the weight of authority, a court of equity has inherent jurisdiction, independent of any action for divorce and irrespec-

tive of any statute, to entertain a suit by a wife for alimony or separate maintenance; * * * ." 42 C.J.S., Husband and Wife, Section 614b, page 213.

The majority opinion undertakes to place its own construction not only on Florida statutes, but also upon the Florida trial court's and the Florida appellate court's construction of such statutes. The majority opinion omits to refer to the case of *Hale* v. *Hale*, 108 W. Va. 337, 150 S. E. 748, which was cited in counsel's brief and relied upon in oral argument. In that case, this Court decided that, by a proper construction of the divorce statutes of this state, a trial court may provide for alimony during the entire life of the wife, "to be paid to her through her life, that is, to be paid by the husband while living and out of his estate after his death, * * * ." Is it the position of the majority opinion that a Florida court may reexamine a decree of that nature entered by a West Virginia trial court, and declare it void merely because the Florida court disagrees with the construction placed on decisions of this Court or West Virginia statutes by a trial court of this state?

[fol. 93] The majority opinion cites various authorities from other jurisdictions involving legal principles similar to those presented in the case of *State ex rel. Hammond* v. *Worrell*, 144 W. Va. 83, 106 S. E. 2d 521. In that case the Court held that since suits for divorce exist only by virtue of statute, a court in such a suit may adjudicate only in relation to such matters as are authorized by statute; that such statutes of this state do not provide for jurisdiction to partition real estate in a divorce suit; and that a decree in a divorce suit which undertakes to partition real estate is void for lack of jurisdiction. But courts of Florida are given statutory authority or *jurisdiction in divorce suits to make adjudications pertaining to alimony.* Therefore, decisions of the type referred to are wholly lacking in pertinency. Here I repeat that which is so fundamental in law, including numerous prior decisions of this Court; that is, jurisdiction to adjudicate in relation to alimony or any other subject includes jurisdiction to decide or adjudicate rightly as well as wrongfully, correctly as well as incor-

rectly, lawfully as well as unlawfully. That is why appellate courts are established.

In my judgment, the majority opinion embodies a labored effort to justify a legally untenable proposition and represents a serious deviation from sound, well settled constitutional principles. I, therefore, respectfully dissent.

[fol. 94]

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

12139

[Title omitted]

MINUTE ENTRY OF FILING OF PETITION FOR REHEARING AND SUSPENSION OF MANDATE—September 5, 1962

Petition for rehearing and reargument having been filed in the above styled action on the 6th day of August, 1962, it is ordered by the Court that the mandate heretofore entered herein be, and it is hereby suspended until the further order of the Court.

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

12139

[Title omitted]

MINUTE ENTRY OF DENIAL OF REHEARING—October 22, 1962

The petition for rehearing and reargument filed in this action having been maturely considered, a majority of the Court is of opinion to, and doth hereby deny the prayer of the petition and doth order that the final order entered herein be made absolute and certified as heretofore directed. Judge Calhoun would grant.

[fol. 94a] [File endorsement omitted]

[fol. 95]

No. 12139

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

CHARLESTON

MARGUERITE LORETTA ALDRICH

vs.

WILLIAM T. ALDRICH, ET AL.

PETITION OF MARGUERITE LORETTA ALDRICH, APPELLANT, PLAINTIFF BELOW, FOR A REHEARING—Filed August 6, 1962

To the Honorable Judges of the Supreme Court of Appeals of West Virginia:

The undersigned petitioner, Marguerite Loretta Aldrich, respectfully represents that she is aggrieved by the judgment of the majority of this Honorable Court entered on July 6, 1962, by which the judgment of the Circuit Court of Putnam County was affirmed.

Proposition for Consideration

The proposition before this Honorable Court was whether a final judgment of the Circuit Court of Dade County, [fol. 96] Florida, would be given full faith and credit in Putnam County, West Virginia, and enforced as provided by Article IV, Section I, of the Constitution of the United States.

Judgment of This Court

The majority opinion of this Court held that the judgment was not enforceable in West Virginia because the Florida Court erred in making the finding and ruling set out therein.

This case is the aftermath of a divorce suit which was tried in the Circuit Court of Dade County, Florida, in which Marguerite Loretta Aldrich was plaintiff and the late M. S. Aldrich was defendant. Both parties appeared and submitted themselves to the jurisdiction of the court and it is admitted that the court had jurisdiction of the subject matter. A divorce was awarded to the plaintiff, appellant, and the defendant, the late M. S. Aldrich, was ordered to pay alimony to her in the amount of $250.00 per month so long as she lived and the decree specifically made the same a charge against his estate upon his death. The alimony was subsequently reduced to $215.00 per month but the decree otherwise was unchanged.

This order of the Circuit Court of Dade County, Florida, was entered on June 1, 1945, and was not appealed from.

M. S. Aldrich complied with the order of the court until his death, which occurred May 29, 1958. This action was brought to enforce the claim of the plaintiff against his assets in West Virginia, for alimony which accrued to her after his death. The Circuit Court of Putnam County dismissed the action and the majority of this Court affirmed.

[fol. 97] Grounds for Rehearing

1. The majority opinion does not give full faith and credit to the decree of the Florida Court as required by Article IV, Section 1, of the Constitution of the United States.

2. The majority opinion misinterprets the holding of the Florida Court in *Johnson* vs. *Every*, 1957, 93, So. 2d 390.

3. The majority opinion leaves every final order of trial courts open to review and repudiation years after the time for appeal has passed.

* * * * * * *

[fol. 103] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 104]

SUPREME COURT OF THE UNITED STATES

No. 737—October Term, 1962

MARGUERITE LORETTA ALDRICH, Petitioner,

vs.

WILLIAM T. ALDRICH, et al.

ORDER ALLOWING CERTIORARI—April 15, 1963

The petition herein for a writ of certiorari to the Supreme Court of Appeals of the State of West Virginia is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office-Supreme Court, U.S.
FILED
JAN 10 1963
JOHN F. DAVIS, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1962

No. [redacted] 55

MARGUERITE LORETTA ALDRICH,
Petitioner,

vs.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, A Corporation, and JOHN C. WHITE, Executor of the Estate of M. S. Aldrich, Deceased,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1962

No. .....

MARGUERITE LORETTA ALDRICH,
Petitioner,

vs.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, A Corporation, and JOHN C. WHITE, Executor of the Estate of M. S. Aldrich, Deceased,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Petitioner, Marguerite Loretta Aldrich, prays that a Writ of Certiorari be issued to the Supreme Court of Appeals of West Virginia to review the judgment of that Court entered in the above entitled case.

JURISDICTION

This action was brought in the Circuit Court of Putnam County, West Virginia, to enforce a judgment rendered in the Circuit Court of Dade County, Florida. The Supreme Court of Appeals of West Virginia refused to accord full faith and credit to the Florida judgment. Jurisdiction of this Court is invoked under Article 4, Section 1 of the Constitution of the United States.

JUDGMENT BELOW

The judgment of the Court below was entered on July 6, 1962, (Record P. .....). A petition for rehearing was promptly filed with said Court and thereafter on October 22, 1962, an order was entered denying a rehearing and affirming the former judgment (Record P. .....).

QUESTIONS PRESENTED

The questions presented in this case are:

1. Whether the final judgment of the Circuit Court of Dade County, Florida, entered in the case of Marguerite Loretta Aldrich vs. M. S. Aldrich on May 31, 1945, as amended on June 5, 1945, will be enforced in the courts of West Virginia.

2. Whether the judgment of the Florida court is entitled to full faith and credit in the State of West Virginia under Article 4, Section 1 of the Constitution of the United States.

3. Whether the courts of West Virginia may review the judgment of the Florida court and pass on whether that Court decided the case correctly.

CONSTITUTIONAL PROVISION INVOLVED

The language of Article 4, Section 1 of the Constitution of the United States reads as follows:

> "Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

STATEMENT OF THE CASE

This is the aftermath of a divorce suit tried in the Circuit Court of Dade County, Florida, in which the petitioner,

Marguerite Loretta Aldrich, was plaintiff and M. S. Aldrich was defendant. Both parties were before the court and the case appears to have been bitterly contested. No jurisdictional question was raised as to the subject matter or the parties in the court below and no such question is presented to this Court.

The petitioner and M. S. Aldrich were married in 1918. Differences arose between them following which they were divorced in Dade County, Florida, on May 31, 1945. This decree, a copy of which is in the case as "Plaintiff's Exhibit A" awarded alimony to the petitioner in the sum of $250.00 per month so long as she lived and made the same a charge against the estate of M. S. Aldrich in the event of his death. This part of the decree reads as follows:

"4. That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00 as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court at Miami, Dade County, Florida, and in the event the defendant, Moriel Simeon Aldrich, shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto;".

On June 5, 1945, M. S. Aldrich petitioned the Circuit Court of Dade County for a rehearing which was denied. The Court, however, reduced the alimony from $250.00 to $215.00 per month. See "Plaintiff's Exhibit B."

M. S. Aldrich died testate on May 29, 1958, while a resident of Putnam County, West Virginia. His last will and testament was duly probated and the estate was put in line for settlement. The petitioner filed a claim for alimony which accrued after his death.

M. S. Aldrich, at the time of his death, owed no alimony to the petitioner, he having kept his payments current. The appraisal of the estate showed assets in the amount of $7,283.50, which was inadequate to meet future obligations of the Florida divorce decree.

The petitioner filed this action in the Circuit Court of Putnam County, West Virginia, for the purpose of having her rights determined and having certain allegedly fraudulent transfers and conveyances made by M. S. Aldrich to his son, William T. Aldrich, and a corporation known as Aldrich-Slicer Company, set aside and the assets put back in the estate of M. S. Aldrich so that funds would be available for future payments of alimony. She predicated her claim on the Florida divorce.

William T. Aldrich is the son of M. S. Aldrich and the petitioner. Natalie Aldrich is the wife of William T. Aldrich. Angela Aldrich is the widow of M. S. Aldrich. M. S. Aldrich & Associates, Inc., is a corporation which was principally, if not solely, owned by M. S. Aldrich during his lifetime or until a short time prior to his death. Aldrich-Slicer Company is a corporation organized by William T. Aldrich. John C. White is executor of the M. S. Aldrich estate.

The petitioner charged that M. S. Aldrich, prior to his death, transferred a lucrative insurance business to his son, William T. Aldrich, one of the defendants herein, and to Aldrich-Slicer Company, a corporation, owned by his son, and thereby rendered his estate unable to meet the alimony payments which fell due and were to accrue after his death. She also charged that he owned a farm in Putnam County, title to which he had put in his son, Edwin M. Aldrich, in 1942, and which had been conveyed by Edwin to William T.

Aldrich in 1946. Both deeds were executed without consideration. She prayed that these transfers and conveyances be set aside and an accounting made. An answer was filed by William T. Aldrich in which he denied the fraudulent charges.

The defendants with the exception of Angela Aldrich, who had not made an appearance in the case, filed a motion for judgment on the pleadings. In order that the legal propositions might be determined with as little expense as possible, a stipulation was entered into and filed setting out that no alimony was owed at the time of the death of M. S. Aldrich. It was also stipulated that there was no constructive or actual fraud in the conveyance of the Putnam County real estate. It was contended by the petitioner that despite the conveyances, the real estate was actually owned by M. S. Aldrich at the time of his death and she so charged in her complaint.

The Circuit Court of Putnam County held that the decree of the Florida court was invalid and unenforceable in so far as it attempted to impose an obligation to pay alimony on the estate of M. S. Aldrich. An appeal was awarded by the Supreme Court of Appeals of West Virginia to this judgment. Upon a hearing in that Court the judgment was affirmed with one of the four members filing a vigorous dissent.

RULING OF THE COURT BELOW

The Circuit Court of Dade County, Florida, by its opinion and judgment of May 31, 1945, as amended June 5, 1945, awarded alimony to the petitioner and against M. S. Aldrich in the amount of $215.00 per month so long as she lived and made the same a charge against the estate of M. S. Aldrich in the event he predeceased the petitioner. The Su-

preme Court of Appeals of West Virginia by the majority opinion refused to enforce this decree. The reason assigned was that the Florida court erred in rendering the judgment in so far as it made the petitioner's alimony a charge against the estate of M. S. Aldrich after his death.

The majority opinion holds that a West Virginia court may review the merits of a judgment of a sister state and refuse to enforce it providing in its opinion the court of the sister state erred in its interpretation of the law. This means that the courts of West Virginia will not give full faith and credit to the judicial proceedings of other states.

POINTS RAISED FOR ALLOWANCE OF WRIT

1. Full faith and credit should be accorded to the Florida judgment.

2. Florida courts hold that alimony may be made a charge against a husband's estate.

3. The Florida judgment in question is not repugnant to the policy or laws of West Virginia since like decrees may be entered and enforced by the courts of this State.

4. The questions raised are of great general and public interest.

ARGUMENT

1. *Full faith and credit should be accorded to the Florida judgment.*

An excellent statement of the general law relating to this

point is found in Volume 30A Am. Jur. Section 239 on Judgments which reads as follows:

> "Conclusiveness and Effect. —The full faith and credit clause has established throughout the federal system the common-law principle that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered. A judgment of a sister state is conclusive as to the nature and amount of the claim upon which it was based. Thus, under the full faith and credit clause of the Constitution of the United States, a judgment rendered by a court of one state is, in the courts of another state of the Union, binding and conclusive as to the merits adjudicated. It is improper to permit an alteration, modification, or reexamination of the judgment, or of the grounds on which it is based, or of the merits of the original cause of action. Thus, jurisdiction to render the judgment having been established or being presumed, the full faith and credit clause precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment is based. Whatever mistake of law may underlie a judgment, it is, under the full faith and credit clause, conclusive as to all the media concludendi. The general rule is that if the judgment has locally the faith and credit of evidence of the highest nature, that is to say conclusive evidence, it must have the same faith and credit in every other court, and in this respect it has been declared that where a defendant has had full notice, the judgment is presumed to be conclusive in the state of its rendition. However, if a judgment is not conclusive in the state of its rendition, it is equally inconclusive in another state.

> "A valid judgment rendered in one state will be recognized in another state as imposing upon the party against whom it was rendered a duty to obey the judgment, or as determining interest in a thing or in the status of the parties. However, no execution can issue directly upon a foreign judgment, but such judgment must be sued upon like any other debt. A foreign judgment cannot of its own force create any lien upon property in a state other than that of its rendition."

The case of *Milliken* vs. *Meyer*, reported in 311 US, 457, 312 US 712, 85 L. ed. 278, 1143, 61 S. Ct. 339, 548, 132 ALR 1357, deals with the proposition of whether full faith and credit shall be given by the courts of one state to the judgment of a sister state. In this case one W. B. Milliken instituted an action in the State of Wyoming against Violet L. Meyer individually and as Administratrix of the Estate of R. D. Meyer, praying for an accounting of certain profits in an old development venture. Meyer, who was a resident of Wyoming, was served personally with process in accordance with a statute while outside the State. The Wyoming court rendered a judgment in favor of Milliken who later brought an action on the judgment in the State of Colorado. The Supreme Court of the State of Colorado held that judgment of the Wyoming Court was null and void because of an irreconcilable contradiction between the findings and the decree. This court granted a writ of certiorari to the Colorado court. In reversing the judgment of that court it was said:

> "Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry. Grover & B. Sewing Mach. Co. v. Red-

cliffe, 137 US 287, 34 L. ed. 670, 11 S. Ct. 92; Adam v. Saenger, 303 US 59, 82 L. ed. 649, 58 S. Ct. 454. But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.' Adam v. Saenger, supra (303 US at p. 62, 82 L. ed. 651, 58 S. Ct. 454). In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. Fauntleroy v. Lum, 210 US 230, 52 L. ed. 365, 48 S. Ct. 142, 53 ALR 1141; Titus v. Wallick, 306 US 282, 83 L. ed. 653, 59 S. Ct. 557. Whatever mistakes of law may underlie the judgment (Cooper v. Reynolds, 10 Wall. (US) 308, 19 L. ed. 931) it is 'conclusive as to all the media concludendi.' Fauntleroy v. Lum, supra (210 US at p. 237, 52 L. ed. 1042, 28 S. Ct. 641.)"

This Court in *Johnson* vs. *Muelberger*, 71 S. Ct. 474, 340 US 580, 95 L. ed. 552, considered the right of the courts of New York to modify or nullify a Florida divorce decree. In that case a widower by the name of Johnson married a second time. This new wife brought an action for divorce in the State of Florida in which he appeared and made an unsuccessful defense. He subsequently remarried. While a resident of New York, he died and left his entire estate to his daughter. His third wife renounced the will and claimed a third of the estate. The daughter charged that the divorce from the second wife in Florida was illegal and consequently the third marriage was void. In dealing with her contention this Court said:

"We conclude that Florida would not permit Mrs.

Muelberger to attack the Florida decree of divorce between her father and his second wife as beyond the jurisdiction of the rendering court. In that case New York cannot permit such an attack by reason of the Full Faith and Credit Clause. When a divorce cannot be attacked for lack of jurisdiction by parties actually before the court or strangers in the rendering state, it cannot be attacked by them anywhere in the Union. The Full Faith and Credit Clause forbids."

A very potent statement of the law relating to the effect of Article 4, Section 1 of the Constitution is found in *Sherrer* vs. *Sherrer*, reported in 68 S. Ct. 1087, 334 U. S. 343, 92 L. ed. 1055 1 ALR 2d 1355. This case deals with the duty of the Massachusetts court to respect a Florida divorce decree. The husband had appeared in the case and made an unsuccessful attempt to contest it. In holding that the Massachusetts court should respect the results of the Florida decree, this court speaking through Chief Justice Vinson said:

"x x x Nor do we understand the decisions of this Court to support the proposition that the obligation imposed by Article 4, §1 of the Constitution and the Act of Congress passed thereunder, amounts to something less than the duty to accord full faith and credit to decrees of divorce entered by courts of sister States. The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation. If in its application local policy must at times be required to give way, such 'is part of the price of our federal system.' Williams v. North Carolina, 317 US 287, 302, 87 L. ed. 279, 288, 63 S. Ct. 207, 143 ALR 1273 (1942)."

We respectfully submit that the Supreme Court of West Virginia cannot rightfully undermine a judgment of a sister state on grounds not cognizable in the state where the judgment was rendered. We say not cognizable because no court sitting in the State of Florida could now invalidate the decree of the Circuit Court of Dade County entered on June 5, 1945, or refuse to enforce it. That decree settled the rights of the parties once and for all and became final when not appealed from. It barred all future litigation and settled not only the issues raised at the trial but all issues which could have been raised. The West Virginia Court was, therefore, powerless to retry the case.

The Supreme Court of Appeals of West Virginia prior to the ruling complained of adhered to Article 4, Section 1 of the Constitution of the United States by giving full faith and credit to the judgments of sister states. An able pronouncement of this rule was made in *Stewart* vs. *Stewart*, 27 W. Va. 167. That case dealt with a decretial judgment by the Court of Common Pleas of Columbiana County, Ohio, for alimony in a suit brought by a wife against her husband in which a divorce was not prayed for and not granted. The plaintiff, wife, undertook to enforce this decree in the Circuit Court of Hancock County, West Virginia, against a tract of land owned by the defendant. The defense interposed was that the Courts of West Virginia could not enter a judgment for alimony unless the same was supported by a decree of divorce. In disposing of this matter, the court on page 173 of the opinion said:

> "But it is not on the ground that such suits have been maintained in many States, that we would enforce a decree for such cause in our own courts, nor would we sustain it because it agreed with our policy, nor refuse to enforce it here because it is hostile to our policy. The reason why we would en-

force a decree, rendered by a court of competent jurisdiction in another State, is the fact that the Constitution of the United States requires us to do so. For the wisest purposes the States when they formed and adopted the Constitution of the United States provided in Section 1 of Article IV: 'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. If this clause had not been inserted in the Constitution and rigidly enforced by the judiciary in all the States, our relations as States to each other would have been anything but harmonious. Citizens by passing from one State to another could escape the effect of their contracts and obligations. It is not a question of State policy, whether we will or will not give effect to the judgments of courts of competent jurisdiction of other States. It is a question, whether we will in good faith live up to the constitutional obligations, which we have assumed. In Gilchrist v. W. Va. O & O. L. Co., 21 W. Va. 115, we decided, that where a judgment rendered in another State is sought to be enforced in a court in this State, our courts may enquire into the jurisdiction of the court, which rendered it, and if it appear that the court, which rendered the judgment, had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, it is valid and binding in this State; that in deciding what effect a judgment rendered in another State is to have in this, it must be regarded as well settled, that it must have the same effect here, as it had in the State, where it was rendered. It is not an open question, whether we will enforce the judgments and decrees of another state rendered by courts of competent jurisdiction having jurisdiction to render such judgment or decree. The general rule is, as we have stated it, if there are any exceptions, I have not been able to find

> them. I do not say there can be none. If the court of common pleas of Columbiana County had jurisdiction to pronounce the decree rendered there, and sought to be enforced here, we must give full faith and credit to it and enforce it here."

This holding is buttressed by a long line of cases decided since that time among which are *Campbell* vs. *Switzer*, 82 S. E. 319, 74 W. Va. 509; *Wells-Stone Mercantile Co.* vs. *Truax*, 29 S. E. 1006, 44 W. Va. 531; *Crumlish's Admr.* vs. *Central Improvement Co.*, 18 S. E. 456, 38 W. Va. 390; *Sayre's Adm'r* vs. *Harpold*, 11 S. E. 16, 33 W. Va. 553; *Grinrod Process Company* vs. *Rothwell*, 189 S. E. 100, 117 W. Va. 709; *Pukas* vs. *Pukas*, 42 S. E. 2d 11, 129 W. Va. 765; *Gavenda Bros.* vs. *Elkins Limestone* (W. Va.), 116 S. E. 2d 910; and *Bennett* vs. *Bennett*, 70 S. E. 2d 894, 137 W. Va. 179.

2. *Florida courts hold that alimony may be made a charge against a husband's estate.*

The case of *Johnson* vs. *Every*, (Florida), 93 So. 2d 390. appears to settle this question. This was a proceeding brought by a divorced wife for a post decretial order requiring the ancillary administrator of the estate of the deceased former husband to pay alimony which accrued under a divorce decree and property settlement. The decree of divorce provided for payments until death or remarriage of the wife and the payments in controversy accrued after the husband's death. In disposing of this matter the Florida court said:

> "We subscribe to the proposition that in the absence of an express contract or a provision in a decree such as the one before us, a divorced husband's liability for alimony terminates with his death. On the other

hand where the decree or property settlement agreement expressly provides for the continuance of the payments 'until death of the wife' then the husband's estate remains liable for the obligation in the same manner as it is liable for any other legitimate obligation outstanding at the time of his death. Here there was a provision in the final decree as well as in the property settlement agreement to the effect that the payments would be made during the life of the wife or until she remarried. She is still living and she is not remarried, and consequently, the conditions for the termination of the weekly payments have not occurred.

"This was in effect a part of our holdings in Underwood vs. Underwood, 64 Southern 2d 281; and Allen vs. Allen, 111 Fla., 735, 150 S. E. 237, 238. In the last case cited, we held: 'As a general rule the obligation to pay alimony dies with the person, but the agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this State.' "

You will note that the disjunctive "or" is used. This means that either a contract of settlement or a holding of the court in the divorce decree is sufficient to establish liability on the estate.

Further on in the opinion the court said:

"While we concur in the view of the trial Chancellor that the alimony payments cannot be increased either retrospectively or prospectively after the death of the husband, we cannot concur in the view that as a matter of law his estate is not liable for the amount fixed by the final decree in a situation such as the

one presently before us. See Jennings vs. First National Bank, 116 W. Va. 409, 180 S. E. 772, 100 A. L. R. 494, 500; and 17 Am. Jur. Divorce and Separation, Sec. 733, p. 550."

The holding in *Johnson* vs. *Every, supra*, was based on a contract in the nature of a property settlement between the husband and wife, executed during a suit for divorce. The husband agreed to pay the wife alimony in the amount of twenty-five dollars per week for the duration of her life, to be terminated upon her death or remarriage to any person other than the defendant. This language was incorporated in the decree of divorce. *Nothing was said about enforcing payments against the defendant's estate should he predecease the wife.* He did predecease the wife and she sought to enforce liability against his estate. The primary proposition before the Florida court was the interpretation of the contract and whether the parties intended to bind the husband's estate for payments which might accrue after his death. The court split on the interpretation of the contract, the majority holding that the contract was sufficiently broad to hold the estate liable. The minority said that the parties did not intend to bind the estate. The court, therefore, was dealing with the construction of a contract rather than a legal principle. The court did lay down the proposition that the estate of a deceased husband could be bound for alimony by an express contract or by the provisions of a decree. In the instant case, express provisions were incorporated in the decree specifically stating that the decedent's estate would be liable for future payments. This shows the intention of the court which fixed the rights of the parties

We submit that courts in the State of Florida have power to decree alimony payments against a husband. It neces-

sarily follows that the amount and duration is left to the judgment of the courts of that state. If the trial court errs, and we don't concede that the trial court erred in this case, the losing party has his right of appeal through the proper appellate channels. Once that right of appeal is lost it is not within the purview of any court to say what the Florida court should have held. The judgment becomes final as to all parties everywhere.

The majority opinion of the West Virginia court in support of its position cited the case of *Diegaard* vs. *Diegaard*, (Florida Appellate Court, not the Supreme Court) 114 So. 2d 516. In that case, the trial court awarded alimony in the amount of $75.00 per week to the plaintiff together with a lump sum of $5,000.00 as post demise alimony in the event of the husband's death prior to the remarriage or the death of the wife. The Florida court in deciding this case quoted the statute which provides: "In any award of permanent alimony, the court shall have jurisdiction to award periodic payments *or payment in a lump sum.*" Emphasis ours. In dealing with the lump sum award the Florida court said "It has been held that a Chancellor cannot award both periodic alimony payments and lump sum alimony." The statute, as above pointed out, provided that alimony could be either periodic payments or a lump sum payment. The Florida court merely held there was no statutory authority for both. Thus we see that the majority of the West Virginia court cited authority which does not support its position. The same may be said for *Gessler* vs. *Gessler*, 273 Fed. 2d 302 also relied on in the majority opinion of the West Virginia court.

We respectfully submit that a judgment of a court of record in any one of the fifty states of the Union is not open to question in a sister state provided that the court which ren-

dered the judgment had jurisdiction of the parties and of the subject matter and that the judgment was not procured by fraud.

It is admitted that the Circuit Court of Dade County, Florida, had jurisdiction of the parties and of the subject matter. It is not contended by anybody that there was fraud in procurement of the judgment. These propositions being true, we submit that the judgment cannot be attacked in a West Virginia Court. *Gavenda Bros. Inc.*, vs. *Elkins Limestone Co., Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; and *Caswell* vs. *Caswell*, 84 W. Va. 575, 100 S. E. 482, and a long line of cases cited in these authorities so hold. The majority of the West Virginia court says the Florida judgment may be attacked. Why? Because the court believes the decision of the Florida court to be wrong. This is a mere supposition since the Supreme Court of Florida has not dealt with a decree exactly like the one in the instant case though it has stated that such a decree is valid. *Johnson* vs. *Every*, 1957, 93 So. 2d 390.

The West Virginia court in the majority opinion said: "When a judgment or decree of a court of another state is sought to be enforced in a court of this state, the court in this state may inquire into the jurisdiction of the court which rendered the judgment or decree, and if it appears that such court had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, the judgment or decree is binding in this state." This is a correct statement of law which is universally accepted. Yet the majority opinion repudiates this proposition in its holding by confusing jurisdiction with the correctness or incorrectness of the decision sought to be enforced. This we submit cannot be done. Jurisdiction is one thing and a decision on the merits is another.

3. *The Florida judgment in question is not repugnant to the policies or laws of West Virginia since like decrees may be entered and enforced by the courts of this State.*

The case of *Hale* vs. *Hale*, 108 W. Va. 337, 150 S. E. 748, deals with the proposition of whether the Supreme Court of West Virginia, upon decreeing the dissolution of a marriage, may award alimony during the life of the wife. This was a suit for divorce a vinculo matrimonii following a divorce from bed and board in which the wife sought permanent alimony. In point two of the syllabus the court made the following holding:

> "Where a dissolution of a marriage is decreed upon the application of a wife, the court may provide for alimony during the life of the wife, under Code c. 64, section 11."

In the opinion the court said:

> "As a general rule, where a wife granted a divorce a mensa et thoro, her inchoate right of dower and her right to participate in the distribution of her husband's personal estate remaining unimpaired, alimony, if granted, should be only for the joint lives of the parties, or until reconciliation. Henrie v. Henrie, 71 W. Va. 131, 76 S. E. 837. But, where the divorce is to the wife a vinculo matrimonii, and her right to participate in the estate of her husband is cut off, then it is within the power of the trial chancellor to require alimony to be paid to her through her life, that is, to be paid by the husband while living and out of his estate after his death, provided the statute of the state is sufficiently broad to cover such contingency. 19 C. J. pp. 278, 279; 1 R. C. L. p. 933; Nelson on Divorce and Separation, vol. 2, p. 880. Our statute, Code, c. 64, §11, clothes

> the chancellor with wide power in making such 'decree as it shall deem expedient, concerning the estate and maintenance of the minor children.' We think this is of sufficient breadth to warrant a requirement by the trial court that permanent alimony may be paid out of a husband's estate after his death, when, in the chancellor's opinion, such course is just and right. See generally Hartigan v. Hartigan, 65 W. Va. 471, 473, 64 S. E. 726, 131 Am. St. Rep. 973, 17 Ann. Cas. 728; Gum v. Gum, 122 Va. 32, 94 S. E. 177. But, since in many instances there cannot be as large alimony paid by a man's estate as he was able to pay in his lifetime, such allowances will be subject to necessary modification as exigencies of the situation may require."

The case of *Jennings* vs. *First National Bank of Williamson*, 116 W. Va. 409, 180 S. E. 772, holds that a decree of divorce providing for alimony during the life of the wife is valid and enforceable when based on a property settlement contract. While this is not controlling on the matter raised in the instant case it does lend force to the proposition that alimony for life, even when it comes out of the deceased husband's estate, is not repugnant to the laws of West Virginia. Therefore, the majority opinion of the West Virginia Court cannot be sustained on the proposition that enforcement of the Florida decree in the instant case would do violence to legal principles of that State.

4. *The questions raised are of great general and public interest.*

The founding fathers in writing the Constitution intended that the public Acts, Records, and Judicial Proceedings of each state should be respected in all other states of the

Union. As applied to a judicial proceeding, they intended that a judgment in one state would be a finality on all questions raised or which could have been raised. Hence Article 4, Section 1 was written.

The rule which we are insisting on has been followed consistently wherever and whenever raised in the United States. The only variance has been where the court lacked jurisdiction of the parties or the subject matter; or where the judgment was obtained through fraud. The majority of the Court in West Virginia departs from and overrules these well established principles. It would have the judgments of sister states reviewed anywhere, and any time, and would make them subject to be overturned in any forum where presented. If this opinion should become the law of the land, Article 1, Section 1 of the Constitution would be nullified.

CONCLUSION

We respectfully submit that Article 4, Section 1 of the Constitution of the United States makes it mandatory upon the Supreme Court of Appeals of West Virginia to enforce the Florida decree unless the State elects to secede. What was done in this case by the majority of the court was certainly a step in that direction. If the executor of the estate of M. S. Aldrich and the beneficiaries thereof have a remedy, it is in the Circuit Court of Dade County, Florida, where the decree was rendered, which Court retained jurisdiction over the case. We, therefore, respectfully submit that this court should grant certiorari.

Respectfully submitted,

HERMAN D. ROLLINS,
Davidson Building
Charleston, West Va.
Attorney for Petitioner.

APPENDIX A

Order of the Circuit Court of Putnam County, West Virginia, entered August 2, 1961.

Marguerite Loretta Aldrich, Plaintiff,
vs. : Civil Action No. 63. Judgment.
William T. Aldrich, et als., Defendants.

This action came on to be heard on motion for judgment on the pleadings made by the defendants William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company; upon stipulation of counsel for the plaintiff, counsel for the defendants William T. Aldrich, Natalie Aldrich, M. S. Aldrich Associates, Inc., and Aldrich-Slicer Company, and the defendant John C. White, as Executor of the estate of M. S. Aldrich, deceased; and upon written notes of argument, and arguments of counsel.

Upon consideration of the foregoing the Court hereby finds:

1. The late M. S. Aldrich had paid, during his lifetime, all alimony owing to the plaintiff, Marguerite Loretta Aldrich, pursuant to the decree of the Circuit Court of Dade County, Florida, described and set forth in Exhibits A and B of the bill of complaint filed herein, from the effective dates of said decrees, until May 29, 1958, the date of the death of said M. S. Aldrich.

2. The aforesaid decrees of the Circuit Court of Dade County, Florida, to the extent that they attempt to impose upon the estate of the late M. S. Aldrich the duty and obligation to pay alimony accruing after his death, are invalid and unenforceable.

3. There was no fraud, actual or constructive, in the execution and delivery by M. S. Aldrich and Marguerite Loretta Aldrich of the deed dated April 22, 1942, described and set forth in Exhibit D of the amended bill of complaint filed herein, conveying certain land in Putnam County, West Virginia, to Edwin M. Aldrich.

Wherefore, it appearing to the Court that the defendants Natalie Aldrich, William T. Aldrich, M. S. Aldrich & Associates, Inc., a corporation, Aldrich-Slicer Company, a corporation, and John C. White, as Executor of the estate of M. S. Aldrich, deceased, are entitled to judgment in their favor, and in favor of each of them, on the undisputed facts appearing in the pleadings and in the stipulation of counsel filed herein, it is ORDERED and ADJUDGED that the complaint be and it is hereby dismissed, with prejudice, and that the defendants recover of the plaintiff their respective costs of action. To which counsel for the plaintiff objects and excepts.

Dated: August 2, 1961.

/s/ JAMES LEE THOMPSON,
Judge.

APPENDIX B

Order of the Supreme Court of Appeals of West Virginia, awarding an appeal, entered October 16, 1961.

State of West Virginia:

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 16th

day of October, 1961, the following order was made and entered, to-wit:

Marguerite Loretta Aldrich, Plaintiff Below, Appellant,
12139 : vs.
William T. Aldrich, et al., Defendants Below, Appellees.

On a former day, to-wit, August 22, 1961, came the petitioner, Marguerite Loretta Aldrich, by H. D. Rollins, her attorney, and presented to the Court her petition praying for an appeal from a judgment of the Circuit Court of Putnam County rendered in this action on the 2nd day of August, 1961, with the record therein accompanying the petition, and note of argument in support thereof, which being seen and inspected by the Court the appeal prayed for is granted, but it is not to take effect until the petitioner, or some person for her, shall have given before the Clerk of the Circuit Court of Putnam County bond with good personal security in the penalty of Two Hundred Dollars, conditioned according to law.

A True Copy.

Attest: KENNETH E. HINES,
Clerk Supreme Court of Appeals.

APPENDIX C

Order of the Supreme Court of Appeals of West Virginia, affirming the jndgment of the Circuit Court of Putnam County, entered July 6, 1962.

State of West Virginia:

At a Regular Term of the Supreme Court of Appeals, con-

tinued and held at Charleston, Kanawha County, on the 6th day of July, 1962, the following order was made and entered, to-wit:

Marguerite Loretta Aldrich, Plaintiff Below, Appellant,
12139 : vs.
William T. Aldrich, et al., Defendants Below, Appellees.

Upon an appeal from a judgment of the Circuit Court of Putnam County, rendered on the 2nd day of August, 1961.

The Court having maturely considered the transcript of the record herein and the argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that there is no error in the judgment complained of. It is therefore considered and ordered by the Court that the judgment of the Circuit Court of Putnam County rendered in this action on the 2nd day of August, 1961, be, and the same is hereby affirmed, and that the appellees do recover of and from the appellant their costs about their defense in this Court in this behalf expended, and Thirty Dollars damages: all of which is ordered to be certified to the Circuit Court of Putnam County.

The syllabus of points adjudicated, prefixed to the written opinion prepared by Judge Haymond, was concurred in by Judges Browning and Berry. Judge Calhoun dissents and files a dissenting opinion. Judge Given did not participate in the decision of this case.

A true copy.

Attest: KENNETH E. HINES,
Clerk Supreme Court of Appeals.

APPENDIX D

Majority opinion of the Supreme Court of Appeals of West Virginia.

Judge Given did not participate in the decision of this case. Judge Calhoun dissents and files a dissenting opinion.

No. 12139

MARGUERITE LORETTA ALDRICH

v.

WILLIAM T. ALDRICH, ET AL

Putnam County *Affirmed*

HAYMOND, JUDGE

1. A valid judgment of a court of another state is entitled to full faith and credit in the courts of this state.

2. By virtue of the full faith and credit clause, Article IV, Section 1, of the Constitution of the United States, a judgment of a court of another state has the same force and effect in this state as it has in the state in which it was pronounced.

3. To maintain an action in one state on a foreign judgment or decree, it is necessary that the judgment or decree be a valid personal and final adjudication which is in full force and virtue in the jurisdiction where it was rendered and be capable of enforcement there by final process and the adjudication must have been rendered by a court which had jurisdiction of the parties and of the subject matter.

4. In an action on a judgment of another state the validity of the judgment is determined by the law of the jurisdiction in which the judgment was recovered.

5. A judgment rendered by a court of another state or by a court of this state is subject to attack for lack of jurisdiction to render such judgment or for fraud in its procurement.

6. When a judgment or decree of a court of another state is sought to be enforced in a court of this state, the court in this state may inquire into the jurisdiction of the court which rendered the judgment or decree, and if it appears that such court had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, the judgment or decree is binding in this state.

7. A void judgment, being a nullity, may be attacked collaterally, or directly, at any time and in any court whenever any claim or right is asserted under such judgment.

8. The jurisdiction to entertain suits for divorce exists only by virtue of statute which confers such jurisdiction.

9. The Florida statute authorizing an award of permanent alimony in a decree of divorce does not authorize or empower a court of that state to award alimony to continue beyond the life of the husband.

10. In the divorce proceeding between the plaintiff and her husband, the Circuit Court of Dade County, Florida, had jurisdiction of the parties and of the subject matter of the controversy and had the power to render a judgment dissolving the marriage between the parties; but, in the absence of any agreement between the parties, that court did not have jurisdiction to award alimony to extend beyond the death of the husband and to make such alimony a charge against his estate. For that reason the judgment awarding such alimony was void and of no force and effect under the law of the State

of Florida and will not be given full faith and credit in the courts of this state.

HAYMOND, JUDGE:

In this civil action instituted in the Circuit Court of Putnam County, in which the defendants are William T. Aldrich, son on M. S. Aldrich, deceased, Natalie Aldrich, wife of William T. Aldrich, M. S. Aldrich & Associates, Inc., Aldrich-Slicer Company, a corporation, assets in which corporations were formerly owned by M. S. Aldrich, and John C. White, Executor of the will of M. S. Aldrich, deceased, the plaintiff, Marguerite Loretta Aldrich, divorced wife of M. S. Aldrich, deceased, seeks to enforce the collection, against the estate of M. S. Aldrich, deceased, and certain property now owned by William T. Aldrich, and certain assets formerly owned by M. S. Aldrich and now held by William T. Aldrich, or M. S. Aldrich & Associates, Inc., or Aldrich-Slicer Company, of a certain decree for alimony at the rate of $215.00 per month awarded the plaintiff in a certain divorce suit formerly pending in the Circuit Court of Dade County, Florida. By final order entered August 2, 1961, the Circuit Court of Putnam County, upon the undisputed facts appearing in the pleadings, which consisted of the amended complaint of the plaintiff and its exhibits and the separate answers of each of the defendants, and in the stipulation of counsel, found that the defendants were entitled to judgment in their favor and rendered judgment of dismissal of the plaintiff's amended complaint, with prejudice, and awarded costs in favor of the defendants. From that judgment this Court granted this appeal upon the petition of the plaintiff.

In a suit for divorce instituted by the plaintiff Marguerite Loretta Aldrich against her husband M. S. Aldrich in the Circuit Court of Dade County, Florida, by final decree en-

tered June 1, 1945, that court granted the plaintiff Marguerite Loretta Aldrich an absolute divorce from her husband M. S. Aldrich. The divorce decree contained, among other provisions which are not here material, this provision concerning alimony for the wife: "That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00 as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court at Miami, Dade County, Florida, and in the event the defendant, Moriel Simeon Aldrich shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto; * * *." By a subsequent decree in the same suit entered June 25, 1946, the amount of the alimony was reduced from the sum of $250.00 per month to the sum of $215.00 per month from and after that date. M. S. Aldrich paid the monthly award of $215.00 in full until his death, which occurred May 29, 1958. M. S. Aldrich, who was survived by his second wife, Angela Aldrich, died testate while a resident of Putnam County, and under his last will and testament, which was duly probated, his son, the defendant William T. Aldrich, and his second wife, Angela Aldrich, are the sole beneficiaries of his estate.

The defendant John C. White was named and has qualified as executor of the estate, which is now in process of administration, and the assets of the estate according to the appraisement filed with the amended complaint, consisting of personal property and a small undivided interest in real estate, amount to a total of $7,283.50, which is less than the amount of the unpaid alimony which has accrued under the divorce decree from the death of M. S. Aldrich to the date of the institution of this action.

M. S. Aldrich owned a parcel of land containing about ten acres in Putnam County which was conveyed to him by C. B. Hildreth. On April 22, 1942, he made a deed for that land to his son Edwin M. Aldrich, who at that time was under the age of twenty one years and a cadet at West Point. The plaintiff, as the wife of M. S. Aldrich, joined in and signed and acknowledged that deed. On November 15, 1946, Edwin M. Aldrich and Marge Taylor Aldrich, his wife, conveyed the same property to William T. Aldrich, another son of M. S. Aldrich and one of the defendants in this case. Notwithstanding these conveyances M. S. Aldrich continued to occupy this land as his home until his death. M. S. Aldrich, who owned assets in M. S. Aldrich & Associates, Inc. and Aldrich-Slicer Company, also transferred his interest and control in these corporations to his son William T. Aldrich.

The plaintiff charges that the conveyance by M. S. Aldrich, in which she joined as his wife, to Edwin M. Aldrich, of the residence property of M. S. Aldrich was without consideration and that the transfer of assets in the two corporations which M. S. Aldrich formerly owned and controlled was also without consideration, and that the land and those assets, as well as the assets of the estate of M. S. Aldrich, are subject to the judgment of the Circuit Court of Dade County, Florida, for alimony which has accrued and which has been unpaid since the death of M. S. Aldrich.

The plaintiff contends that the judgment of the Circuit Court of Dade County, Florida, which awards the plaintiff alimony at the rate of $215.00 per month during her lifetime and which makes alimony which accrues after the death of M. S. Aldrich a charge upon his estate, is a valid judgment of another state and as such is entitled to full faith and credit in this state and is enforceable against the assets of

the estate of M. S. Aldrich and the real estate and other assets formerly owned by him which have been transferred to and are now held by his son, the defendant William T. Aldrich.

On the contrary the defendants contend, in substance, that the Circuit Court of Dade County, Florida, was without jurisdiction to award alimony against the defendant M. S. Aldrich which would be valid and enforceable against his estate after his death; that the decree of the Florida court is not enforceable in this action for the reason that it is contrary to the laws of this state and is not within the full faith and credit provisions of the Constitution of the United States and that, even if it should be held to be a valid judgment, it is not enforceable against the property and assets formerly held by M. S. Aldrich and now held by the defendant William T. Aldrich or M. S. Aldrich & Associates, Inc., or Aldrich-Slicer Company, for the reason that the claim of the plaintiff against such property and assets is barred by limitations.

The controlling question for decision is whether the judgment of the Circuit Court of Dade County, Florida, to the extent that it awards alimony to accrue after the death of M. S. Aldrich and makes the alimony so accruing a charge upon his estate, is a valid judgment which is entitled to full faith and credit in the courts of this state; for if such judgment is not entitled to such full faith and credit the question of its enforcibility against the property and assets formerly owned by M. S. Aldrich becomes unimportant and need not be considered or discussed.

This Court has held in many cases that under Article IV, Section 1, of the Constitution of the United States, a valid judgment of a court of another state is entitled to full faith and credit in the courts of this state. *Gavenda Brothers Inc.* v. *Elkins Limestone Company, Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; *Gardner* v. *Gardner*, 144 W. Va. 630,

110 S. E. 2d 495; *Consumers Credit Company of Waynesburg* v. *Bowers*, 143 W. Va. 748, 104 S. E. 2d 869; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Paull* v. *Cook* 135 W. Va. 833, 65 S. E. 2d 750; *Pukas* v. *Pukas*, 129 W. Va. 765, 42 S. E. 2d 11; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795; *International Harvester Company of America* v. *Solazo*, 116 W. Va. 34, 178 S. E. 429; *Campbell* v. *Switzer*, 74 W. Va. 509, 82 S. E. 319; *Roller* v. *Murray*, 71 W. Va. 161, 76 S. E. 172, L. R. A. 1915F, 984, 32 Ann. Cas. 1914B, 1139; *Crumlish's Administrator* v. *Central Improvement Company*, 38 W. Va. 390, 18 S. E. 456, 23 L. R. A. 120, 45 Am. St. Rep. 872; *Stewart* v. *Stewart*, 27 W. Va. 167; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555; *Coleman* v. *Waters*, 13 W. Va. 278. It is also well established that by virtue of the full faith and credit clause, Article IV, Section 1, of the Constitution of the United States a judgment of a court of another state has the same force and effect in this state as it has in the state in which it was pronounced. 2 Black on Judgments, second edition, 1902, Chapter 22, Section 861; 30A Am. Jur., Judgments, Section 237; *Campbell* v. *Switzer*, 74 W. Va. 509 82 S. E. 319; *Roller* v. *Murray*, 71 W. Va. 161, 76 S. E. 172, L. R. A. 1915F, 984, 32 Ann. Cas. 1914B, 1139; *Wells-Stone Mercantile Company* v. *Truax*, 44 W. Va. 531, 29 S. E. 1006; *Crumlish's Administrator* v. *Central Improvement Company*, 38 W. Va. 390, 18 S. E. 456, 23 L. R. A. 120, 45 Am. St. Rep. 872; *Stewart* v. *Stewart*, 27 W. Va. 167; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555; *Black* v. *Smith*, 13 W. Va. 780; *Thompson* v. *Thompson*, 226 U. S. 551, 33 S. Ct. 129, 57 L. Ed. 347; *Barber* v. *Barber*, 62 U. S. (21 How.) 582, 16 L. Ed. 226; *Babcock* v. *Babcock*, 147 Misc. 900, 265 N. Y. S. 470; *Picker* v. *Vollenhover*, 206 Or. 45, 290 P. 2d 789; *Van Natta* v. *Van Natta*, Court of Civil Appeals of Texas, 200 S. W. 907.

In 2 Black on Judgments, second edition, 1902, Chapter 22, Section 861, discussing the effect to be given to a judgment of another state, the author quotes this language from *Wood* v. *Watkinson*, 17 Conn. 500, 44 Am. Dec. 562: "* * * It is well settled, that no greater effect is to be given to it than it would have in the state where it was rendered. It has no higher dignity in any other state than in the one where it was pronounced; and hence, if in the courts of the state where the judgment was rendered, it is inconclusive, or if it is inequirable into there, during a particular period, or on certain conditions, it will be open to investigation, to the same extent, every where else. * * *. It results conclusively from this principle, or is rather involved in it, that if a judgment in a state where it is recovered, has not the effect of binding personally the defendants, or any of them, in the suit in which it was rendered, no greater effect will be given to it in any other state where it is endeavoured to be enforced. It derives its obligation only from the laws of the state in which it is pronounced." To maintain an action in one state on a foreign judgment or decree, it is necessary that the judgment or decree be a valid personal and final adjudication which is in full force and virtue in the jurisdiction where it was rendered and be capable of enforcement there by final process and the adjudication must have been rendered by a court which had jurisdiction of the parties and of the subject matter. 50 C. J. S., Judgments, Section 868. In an action on a judgment of another state the validity of the judgment is determined by the law of the jurisdiction in which the judgment was recovered. 50 C. J. S., Judgments, Section 869. A judgment rendered by a court of another state or by a court of this state is subject to attack for lack of jurisdiction to render such judgment or for fraud in its procurement. *Gavenda Brothers, Inc.* v. *Elkins Limestone Company, Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; *Gardner* v. *Gardner*, 144 W. Va. 630, 110 S. E.

2d 495; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Stephenson* v. *Ashburn*, 137 W. Va. 141, 70 S. E. 2d 585; *Cable* v. *Cable*, 132 W. Va. 620, 53 S. E. 2d 637; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795; *Caswell* v. *Caswell*, 84 W. Va. 575, 100 S. E. 482; *Turner* v. *Stewart*, 51 W. Va. 493, 41 S. E. 924; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555.

When a judgment or decree of a court of another state is sought to be enforced in a court in this state, the court in this state may inquire into the jurisdiction of the court which rendered the judgment or decree, and if it appears that such court had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, the judgment or decree is binding in this state. Point 3, syllabus, *Stewart* v. *Stewart*, 27 W. Va. 167; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795, *Citizens National Bank* v. *Consolidated Glass Company*, 83 W. Va. 1, 97 S. E. 689; *Stewart* v. *Northern Assurance Company*, 45 W. Va. 734, 32 S. E. 218, 44 L. R. A. 101; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555; *Milliken* v. *Meyer, Administratrix*, 311 U. S. 457, 61 S. Ct. 339, 85 L. Ed. 278, 132 A. L. R. 1357, rehearing denied, 312 U. S. 712, 61 S. Ct. 548, 85 L. Ed. 1143; *Fauntleroy* v. *Lum*, 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039; *Simmons* v. *Saul*, 138 U. S. 439, 11 S. Ct. 369, 34 L. Ed. 1054; *Thompson* v. *Whitman*, 85 U. S. (18 Wall.) 457, 21 L. Ed. 897; *Kelley* v. *Kelley*, 161 Mass. 111, 36 N. E. 837; 30A. Am. Jur., Judgments, Section 261.

This Court has held in many cases that a void judgment, being a nullity, may be attacked collaterally, or directly, at any time and in any court whenever any claim or right is asserted under such judgment. *Gavenda Brothers, Inc.* v. *Elkins Limestone Company, Inc.*, 145 W. Va. 732, 116 S.

E. 2d 910; *State ex rel Cecil* v. *Knapp*, 143 W. Va. 896, 105 S. E. 2d 569; *State ex rel. Leeber and Covey* v. *The Board of Education of the County of Raleigh*, 143 W. Va. 584, 103 S. E. 2d 797; *State ex rel. Browning* v. *Tucker*, 142 W. Va. 830, 98 S. E. 2d 740; *State ex rel. Vance* v. *Arthur*, 142 W. Va. 737, 98 S. E. 2d 418; *State ex rel. Lovejoy* v. *Skeen*, 138 W. Va. 901, 78 S. E. 2d 456, certiorari denied, 349 U. S. 940, 75 S. Ct. 786, 99 L. Ed. 1268; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Stephenson* v. *Ashburn*, 137 W. Va. 141, 70 S. E. 2d 585, and many other cases cited in the opinion in the *Gavenda Brothers* case.

In the light of the foregoing well established legal principles in considering whether the judgment, entered by the Circuit Court of Dade County, Florida, awarding alimony to extend beyond the death of M. S. Aldrich and making such alimony a charge against his estate, may be enforced in this state, it is necessary to determine whether those provisions of the judgment are valid under the law of the State of Florida.

In support of her contention that such decree is valid under the law of the State of Florida, the plaintiff cites and relies upon *Johnson* v. *Every*, Fla. 1957, 93 So. 2d 390. In that case the Circuit Court of Dade County, Florida, entered a decree of divorce in favor of the wife Beulah V. Johnson against her husband James Nelson Johnson. The decree awarded the wife the sum of twenty five dollars per week for her support and maintenance and provided that the payment of that amount should cease upon the death of the plaintiff or upon her remarriage to any person other than the defendant. Prior to the divorce proceedings the parties had entered into a property settlement by which the husband agreed that the payments should only be terminated by the

death of the wife or her remarriage to a person other than the husband. After the death of the husband the wife sought, in a proceeding against the administrator of the estate of the deceased former husband, to compel the payment of alimony in accordance with the decree of divorce. The Supreme Court of Florida in a four to three decision held that where under property settlement agreement and divorce decree it was provided that weekly payments to the wife were to be terminated only by the death of the wife or her remarriage to a person other than her husband, the husband's liability for such payments did not terminate at his death and that his estate was liable for such payments during the life of his former wife. The majority opinion in that case contains these paragraphs:

"We subscribe to the proposition that in the absence of an express contract or a provision in a decree such as the one before us, a divorced husband's liability for alimony terminates with his death. On the other hand, where the decree or property settlement agreement expressly provides for the continuance of the payments 'until the death of the wife' then the husband's estate remains liable for the obligation in the same manner as it is liable for any other legitimate obligation outstanding at the time of his death. Here there was a provision in the final decree as well as in the property settlement arrangement to the effect that the payments would be made during the life of the wife or until she remarried. She is still living and she has not remarried, and consequently, the conditions for the termination of the weekly payments have not occurred.

"This was in effect a part of our holding in *Underwood* v. *Underwood*, Fla. 1953, 64 So. 2d 281; and *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, 238. In the case last cited, we held: '* * * As a general rule the obligation to pay alimony

dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state.'

"The rule stated appears to be applicable to the situation in the case at bar."

It is clear from the majority opinion in the *Johnson* case, and particularly from the above quoted paragraphs, that the holding that the estate of the husband was liable for alimony accruing after his death and during the life of his former wife was based and depended entirely upon the agreement by which the husband incurred that obligation, and that in the absence of such agreement an award of alimony would not continue after but would terminate at the death of the husband. It is true that the court said * * * in the absence of an express contract *or* a provision *in a decree such as the one before us,* a divorced husband's liability for alimony terminates with his death." (Italics supplied). Though this language is disjunctive in form, it is evident that the reference to the decree "such as the one before" the court meant a decree based upon a contract. Such meaning is also indicated by the quotation from *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, that "As a general rule the obligation to pay alimony dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state."; and by the statement that the rule stated in the immediately preceding quotation "appears to be applicable to the situation in the case at bar."

That the validity of the award of alimony to continue beyond the death of the husband in the *Johnson* case was based upon and resulted solely from the agreement is also indicated by the dissenting opinion of three of the justices who

would have held the award invalid because it did not appear to them from the agreement between the parties that the parties intended the payments to extend beyond the death of the husband and to be binding upon his estate. The dissenting opinion contains, among others, these paragraphs:

"In the instant case, the agreement does not clearly disclose that the wife released a valuable property right nor that she had any special equity in her husband's business or property. Construing the language used in the agreement and the decree in accordance with its usual meaning, it appears that the weekly payments were intended as 'alimony' in its strictest sense, meaning 'nourishment' or 'sustenance,' arising out of the husband's common-law obligation to support his wife and child. Cf. *Jacobs* v. *Jacobs*, Fla. 1951, 50 So. 2d 169. This being so, we will not infer that the parties and the court intended the payments to extend beyond the death of the husband and to be binding upon his estate, as against the general rule that such payments cease upon his death."; and

"We do not decide, since the question is not presented, whether an award of this type of 'pure' alimony could be made by the court to extend beyond the lifetime of the husband, in the absence of an agreement of the parties to that effect. There is no statute in this state so providing; and it has been said that 'generally such power is considered as not existent, in the absence of any statute or agreement between the parties.' See the statement of the annotator in 39 A. L. R. 2d at page 1409, and cases cited."

The conclusion of this Court that the validity of the award of alimony as determined in the *Johnson* case was due to and was based solely upon the contract between the parties is also supported by the pronouncements of courts which have

considered the effect of the decision in that case. In *Gessler* v. *Gessler*, 273 F. 2d 302, in giving effect to a separation agreement between the husband and the wife which by its express terms was binding upon the parties and their heirs, executors and administrators, and by which the husband provided for the support of his minor children and that payment for such support be made to their mother, and which contract was held to be valid and enforceable against the estate of the deceased husband, the United States Court of Appeals, Fifth Circuit, used this language: "The facts here are analogous to the facts in *Johnson* v. *Every*, Fla. 1957, 93 So. 2d 390. In that case there was a divorce and a property settlement agreement requiring the husband to make weekly payments to his wife to be terminated only by her death or remarriage. The court held that the husband's estate was liable for the payments in accordance with the separation agreement." A similar view of that case was expressed by the District Court of Appeal of Florida, Third District, in *Diegaard* v. *Diegaard*, Fla. 1959, 114 So. 2d 516, a divorce suit in which a decree of the trial chancellor provided that if the defendant husband should die prior to the remarriage or the death of his wife, the wife should have a claim against the estate of the husband in the amount of $5,000.00 in lieu of post-demise alimony. In reversing and holding invalid that provision of the decree the District Court of Appeal said: "In addition, a divorced husband's liability for alimony generally terminates with his death. There was no expressed contract or agreement between the parties that alimony should continue beyond the life of the husband, and in the absence of statutory authority, we conclude that the decree in this respect is without legal basis. See *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237; *Underwood* v. *Underwood*, Fla., 1953, 64 So. 2d 281; *Johnson* v. *Every*, Fla., 1957, 93 So. 2d 390."

In *Underwood* v. *Underwood*, Fla., 1953, 64 So. 2d 281,

and *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, cited by the court in the *Johnson* case, an award to the wife to continue after the death of the husband as a liability of his estate was upheld by the court upon the basis of a property settlement agreement between the husband and the wife; and those cases indicate clearly that in the absence of an agreement an award of alimony would not be valid after the death of the husband. In the *Underwood* case the opinion contains this language: "At the very outset we dispose of the legal effect of the use of the word 'alimony' in the agreement and decree. It is not what it is *called* but what it *is* that fixes its legal status. It is the *substance* and not the *form* which is controlling. In the case of *International Trust Co.* v. *Liebhardt*, 111 Colo. 208, 139 P. 264, 147 A. L. R. 790, the court held that the use of the word *alimony* was not conclusive and that it was substance and not form which guided the court. So far as agreements of the kind under consideration is concerned, where periodic payments are to be made the wife for the period of her life and is not limited to the joint lives of the parties, the legal effect of such payments are that they constitute property settlements and not alimony. By its very nature, alimony is limited to the lifetime of the husband. See *Spear* v. *Spear*, 158 Md. 672, 149 A. 468, from which we quote with approval in *Vance* v. *Vance*, supra; *Emerson* v. *Emerson*, 120 Md. 584, 87 A. 1033; *Newbold* v. *Newbold*, 133 Md. 170, 104 A. 366; *Dickey* v. *Dickey*, 154 Md. 675, 141 A. 387, 58 A. L. R. 634; *North* v. *North*, 339 Mo. 1226, 100 S. W. 2d 582, 109 A. L. R. 1061." And in its opinion in the *Allen* case the court said: "For all the record shows, the agreement brought in question was of the latter class, and, if so, it may be enforced. As a general rule the obligation to pay alimony dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state. 19 C. J. §279, §635, page 279; *Storey*

v. *Storey*, 125 Ill. 608, 18 N. E. 329, 1 L. R. A. 320, 8 Am. St. Rep. 417; *Miller* v. *Miller*, 64 Me. 484; *Barnes* v. *Klug*, 129 App. Div. 192, 113 N. Y. S. 325; *Fleming* v. *Peterson*, 167 Ill. 465, 47 N. E. 755; *Wilson* v. *Hinman*, 182 N. Y. 408, 75 N. E. 236, 2 L. R. A. (N. S.) 232, 108 Am. St. Rep. 820."

This Court has recognized an agreement by the husband to pay alimony during the life of the wife and has held that such payments extend beyond the death of the husband and are enforceable against his estate. *Jennings* v. *First National Bank of Williamson*, 116 W. Va. 409, 180 S. E. 772.

The principle is widely recognized by the decisions of many courts that the jurisdiction to entertain suits for divorce exists only by virtue of statute which confers such jurisdiction. In 27A, C. J. S., Divorce, Section 69, the text contains this language: "In general the power to grant a divorce is a statutory, and not a common-law, power, or, stated more broadly, jurisdiction of courts in divorce actions or proceedings is dependent on statute. A court has only such jurisdiction in divorce matters as the legislature has conferred or delegated by statute, and a power exercised by the court in such proceedings must be in the statute or it does not exist In *McGowin* v. *McGowin*, 122 Fla. 394, 165 So. 274, the opinion contains these statements and citations: "The power to grant a divorce is a statutory and not a common-law power. 19 C. J. 23; *Martin* v. *Martin*, 173 Ala. 106, 55 So. 632; *Herron* v. *Passailaigue*, 92 Fla. 818, 110 So. 539, 542." See also *State ex rel. Cecil* v. *Knapp*, 143 W. Va. 896, 105 S. E. 2d 569.

The only provision of the statutes of Florida for the award of permanent alimony in a decree of divorce is Section 65.08, Fla. Stat. F. S. A., and is expressed in this language: "In any award of permanent alimony the court shall have jurisdiction to order periodic payments or payment in a lump

sum." That statute does not authorize or empower a court of that state to award alimony to continue beyond the life of a husband. *Diegaard* v. *Diegaard*, Fla. 1959, 114 So. 2d 516.

In sections 2 and 3 of the Annotation in 39 A. L. R. 2d 1406, at pages 1408 and 1409, are these statements: "While there is little authority on the precise point, several cases indicate that, in the absence of any statute or agreement between the parties, the court has no power to extend alimony payments beyond the death of the person directed to pay."; and "The determination of whether the husband's death terminates his obligation to pay alimony to the divorced wife depends, first, upon whether the court has the power to provide in its decree that periodical payments for the support of the wife should continue despite the occurrence of such event. It would appear from the cases that generally such power is considered as not existent, in the absence of any statute or agreement between the parties."

In the divorce proceeding between the plaintiff and her husband M. S. Aldrich, the Circuit Court of Dade County, Florida, had jurisdiction of the subject matter of the controversy and of the parties and had the power to render a valid judgment dissolving the marriage between the parties, but, in the absence of any agreement between the parties, and there was no such agreement, that court did not have jurisdiction to award alimony to extend beyond the death of the husband and to make such alimony a charge against his estate. For that reason the judgment awarding such alimony was void and of no force and effect under the law of the State of Florida in which such judgment was rendered and will not be given full faith and credit in the courts of this state.

In *State ex rel. Vance* v. *Arthur*, 142 W. Va. 737, 98 S. E. 2d 418, this Court in its opinion quoted with approval this

test from 11 Michie's Jurisprudence, Jurisdiction, Section 9: "If the court exceeds its jurisdiction over the subject matter, its decrees are nullities to that extent and may be impeached directly or collaterally by any persons, anywhere, at any time, or in any manner, and may be declared void by every court in which they are called in question. Want of jurisdiction affirmatively appearing on the face of the proceedings makes the judgment even of courts of general jurisdiction null, and they may be so treated by any court in any proceeding, direct or collateral."

A judgment may be valid in part and void in part. *State ex rel. Browning* v. *Tucker*, 142 W. Va. 830, 98 S. E. 2d 740; 30A Am. Jur., Judgments, Section 20. "If the judgment is in excess of that which the court rendering it had by law the power to pronounce, such judgment is void for the excess only." *Ex parte Mooney*, 26 W. Va. 36, 53 Am. Rep. 59; *Dye* v. *Skeen*, 135 W. Va. 90, 62 S. E. 2d 681, 24 A. L. R. 2d 1234. In *Flaxman* v. *Flaxman*, 169 Okla. 65, 35 P. 2d 950, that court held that a decree granting a divorce and awarding alimony which the court was without power to award and enforce, was valid as to the divorce but void as to the alimony. See also *Oder* v. *Oder*, 149 Okla. 63, 299 P. 202. In *Acton* v. *Tomlinson*, 278 Mo. 282, 212 S. W. 865, the court held that the jurisdiction of a court to award alimony being statutory, its judgment insofar as it awarded the wife specific personal property as alimony and extinguished her dower, was void. In the opinion that court said: "That the jurisdiction of courts in this state to hear and determine suits for divorce and alimony depends upon and is limited by the statutes is not now an open question. *Chapman* v. *Chapman*, 269 Mo. 663, 192 S. W. 448. Because of such limitations a court in an action for divorce cannot decree to a wife as part or all of her alimony specific personal property of the husband. *Aylor* v. *Aylor*, 186 S. W. 1071. * * *.

In an action for divorce where the court attempts to take into account, adjudicate and settle all questions of property rights, both present and inchoate, between the parties, it is not in so doing merely erroneously exercising jurisdiction; it is proceeding wholly without jurisdiction. It follows, therefore, that its judgment in such respect is void. * * *. It is necessary that a court have jurisdiction, not only of the parties and the subject-matter, but it must also have jurisdiction to render the particular judgment in the particular case. *State ex rel. Muench*, 217 Mo. 124, 117 S. W. 25, 129 Am. St. Rep. 536; *Charles* v. *White*, 214 Mo. 187, 112 S. W. 545, 21 L. R. A. (N. S.) 481, 127 Am. St. Rep. 674." In *Edmondson* v. *Edmondson*, Mo. 1951, 242 S. W. 2d 730, the Kansas City Court of Appeals held that the court which granted a divorce and awarded alimony was without power to award installment payments to the wife for support and maintenance for the rest of her natural life regardless of marriage and to make them a charge upon the estate of the husband; that the portion of the judgment of divorce which purported to award alimony to the wife for the rest of her natural life was void; and that the validity of the remainder of the judgment dissolving the marriage was not affected.

Inasmuch as the judgment for alimony which has accrued since the death of M. S. Aldrich is not enforceable against his estate, the effect of the transfers of the property and assets formerly owned by him is not considered or discussed.

The judgment of the Circuit Court of Putnam County, being free from error, is affirmed.

Affirmed.

Filed July 6, 1962. Kenneth E. Hines, Clerk of the Supreme Court of Appeals of West Virginia.

APPENDIX E

Minority opinion of the Supreme Court of Appeals of West Virginia.

ALDRICH v. ALDRICH—No. 12139

CALHOUN, PRESIDENT, dissenting:

I agree that the portion of the Florida decree which states that the alimony award shall "become a charge upon his estate during her lifetime" cannot have the effect of creating a "charge" in the sense of a lien, equitable or otherwise, upon the husband's real estate in this state. The decree was operative on the husband personally, but could not have the extra-territorial effect of creating a "charge" upon his real estate situated in West Virginia. *Wilson* v. *Braden*, 48 W. Va. 196, pt. 1 syl., 36 S. E. 367; *Woodcock* v. *Barrick and Yost*, 79 W. Va. 449, pt. 3 syl., 91 S. E. 396; *Tennant's Heirs* v. *Fretts*, 67 W. Va. 569, 571, 68 S. E. 387, 388; 50 C. J. S., Judgments, Section 889, page 485.

To the extent, however, that the majority opinion undertakes to determine the mere incorrectness of the Florida court's judgment awarding alimony to be paid to the wife for her lifetime, I respectfully dissent.

Under section 1, Article IV of the Constitution of the United States, a judgment of a court of another state must be accorded full faith and credit in the courts of this state. A judgment of a court of another state may be attacked in a court of this state only for fraud in its procurement or lack of jurisdiction in the court by which it was rendered. 50 C. J. S., Judgments, Section 889e, page 481. If there is any exception to the principles stated above, I have never learned

of it, though such fundamental principles have been adhered to and reaffirmed by this Court until this time in cases almost without number, some of the more recent ones being as follows: *Gavenda Brothers, Inc.* v. *Elkins Limestone Co.*, ... W. Va. ....., 116 S. E. 2d 910; *Gardner* v. *Gardner*, 144 W. Va. 630, 110 S. E. 2d 495; *Consumer Credit Co. of Waynesburg* v. *Bowers*, 143 W. Va. 748, 104 S. E. 2d 869; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Paull* v. *Cook*, 135 W. Va. 833, 65 S. E. 2d 750; *Pukas* v. *Pukas*, 129 W. Va. 765, 42 S. E. 2d 11; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795.

The only way a judgment or decree of a court in another state may be assailed in a court of this state is by showing that it is void. *Pukas* v. *Pukas*, 129 W. Va. 765, 770, 42 S. E. 2d 11, 13. "The only escape from obedience to the rule that a judgment of a sister state is entitled to full faith and credit lies in a holding that the judgment is void and entitled to no standing even in the state in which it was rendered." 30 Am. Jur., Judgments, Section 246, page 314. That is to say, it must appear that, because of a lack of jurisdiction of the person or of the subject matter, "the judgment or decree was void." *Adkins* v. *Adkins*, 142 W. Va. 646, pt. 3 syl., 97 S. E. 2d 789. "The judgment of a sister state must be given full faith and credit unless it is absolutely void." 30A Am. Jur., Judgments, Section 246, page 314.

Courts of this state "may not refuse to enforce a judgment of another state because it involves some contravention of the public policy of this state." *Paull* v. *Cook*, 135 W. Va. 833, pt. 5 syl., 65 S. E. 2d 750. "The judgment or decree of a court of a sister state, having jurisdiction of the parties and the subject matter of suit, is *res judicata* as to all matters determined thereby. The parties are estopped by

such final judgment or decree from again litigating the same matters in a court of this state." *R. D. Johnson Milling Co.* v. *Read*, 76 W. Va. 557, pt. 13 syl., 85 S. E. 726. "A decree relating to alimony, support or maintenance, entered in a court of another state having jurisdiction of the parties and subject matter, is entitled to full faith and credit in the courts of this State." *Bennett* v. *Bennett*, 137 W. Va. 179, pt. 7 syl., 70 S. E. 2d 894. "The faith and credit given is not to be niggardly but generous, full." *Johnson* v. *Muelberger*, 340 U. S. 581, 95 L. Ed. 552, 71 S Ct. 474.

The purpose and effect of the full faith and credit clause "are to extend the res judicata effect of a judgment from the state of its rendition to all other states." 50 C. J. S., Judgments, Section 888b, page 469; 30A Am. Jur., Judgments, Section 236, page 304.

"Thus, under the full faith and credit clause of the Constitution of the United States, a judgment rendered by a court of one state is, in the courts of another state of the Union, binding and conclusive as to the merits adjudicated. It is improper to permit an alteration, modification or reexamination of the judgment, or of the grounds on which it is based, or of the merits of the original cause of action. Thus, jurisdiction to render the judgment having been established or being presumed, the full faith and credit clause precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment is based. Whatever mistake of law may underlie a judgment, it is, under the full faith and credit clause, conclusive as to all the media concludendi." 30A Am. Jur., Judgments, Section 239, pages 307-8. See also *Stewart* v. *Northern Assurance Co.*, 45 W. Va. 734, pt. 1 syl., 32 S. E. 218, 44 L. R. A.

101; *Paull* v. *Cook*, 135 W. Va. 833, 841, 65 S. E. 2d 750, 755; *Dry* v. *Rice*, 147 Va. 331, 137 S. E. 473.

A judgment of a court of a sister state is binding and conclusive upon the courts of this state "not only as to the matters actually determined, but as to every other matter which the parties might have litigated as incident thereto, and coming within the legitimate purview of the subject-matter of the action. * * * An erroneous ruling of the court will not prevent the matter from being *res judicata*." *Sayre's Admr.* v. *Harpold*, 33 W. Va. 553, pt. 1 syl., 11 S. E. 16.

The decree of judgment of a Florida court must be accorded by the courts of this state the same binding effect on the parties thereto as in the state where rendered. If the matter is one which cannot be again litigated there, it cannot be reexamined, relitigated or modified by this or any other court of this state. *Stewart* v. *Stewart*, 27 W. Va. 167, pt. 4 syl. "An adjudication which precludes re-litigation of a question in the state in which it took place may be pleaded in bar in a subsequent suit in another state between the same parties and in which the same matter is involved and decisive of the issue." *Roller* v. *Murray*, 71 W. Va. 161, pt. 3 syl., 76 S. E. 172, L. R. A. 1915F 984, Ann. Cas. 1914B 1139, App. Dism., 234 U. S. 738, 58 L. Ed. 1570, 34 S. Ct. 902. The judgment of a sister state "must have the same faith and credit here, as it had in the state where it was rendered. "*Gilchrist* v. *Oil and Oil Land Co.*, 21 W. Va. 115. pt. 1 syl. "It is well settled that the judgment of a sister state must be accorded in this state the same faith and credit which it has in the state where rendered." *Crumlish's Admr.* v. *Central Improvement Co.*, 38 W. Va. 390, pt. 5 syl., 18 S. E. 456, 23 L. R. A. 120, 45 Am. St. Rep. 872; *Wells-Stone Mercantile Co.* v. *Truax*, 44 W. Va. 531, pt. 1 syl., 29 S. E. 1006; 50 C. J. S., Judgments, Section 889b, page 473.

A judgment of a sister state may not be challenged on the ground "that the basis of the action was tainted with fraud That matter is foreclosed by the judgment." Only fraud "in the procurement" of the judgment may be considered *International Harvester Co.* v. *Solazo*, 116 W. Va. 34, pts. 4 and 5 syl., 178 S. E. 429.

If the court which rendered the foreign judgment is a court of general jurisdiction "the presumption is, it had jurisdiction of the particular case, and, to render the decree void, this presumption must be overcome by proof." *Stewart* v. *Stewart*, 27 W. Va. 167, pt. 6 syl. There is no such presumption in relation to judgments of inferior courts, such as justices of the peace, but such judgments are, nevertheless, entitled to full faith and credit in courts of all other states. 50 C. J. S., Judgments, Section 896, page 513.

Respectable authority appears to support the proposition that the full faith and credit clause will forbid one to question the jurisdiction of the court to render a judgment in a case in which he appeared and participated as a litigant. *Davis* v. *Davis*, 305 U. S. 32, 83 L. Ed. 26, 59 S. Ct. 3; *Morrissey* v. *Morrissey*, 1 N. J. 448, 64 A. 2d 209, 12 A. L. R. 2d 378.

The legal question presented herein must not be confused with our statutory provision that the writ of prohibition shall lie when the inferior court lacks jurisdiction of the subject matter in controversy, "or, having such jurisdiction, exceeds its legitimate powers." Code, 53-1-1. My research fails to disclose any authority for the proposition that this Court may refuse to give full faith and credit to the Florida judgment merely on the ground that that court, having jurisdiction, exceeded its legitimate powers. I believe all legal authorities leave the proposition unquestionable that it is

not enough to show that the Florida judgment is merely erroneous or voidable. It must appear to be absolutely void. a nullity.

I believe also that the proposition is beyond question that, if the Florida court had jurisdiction of the person and of the subject matter, including jurisdiction to award alimony, its judgment cannot be assailed by this Court by reason of anything the Florida court did, however erroneous and without legal authorization, in the exercise of that jurisdiction. I find in this case no basis whatsoever for asserting that the Florida court lacked jurisdiction of either the person or o the subject matter. The contrary appears beyond question. That being true, the judgment of that court cannot be questioned in the absence of a showing that the judgment was procured by fraud, and there is no contention of that nature.

We must be careful not to confuse jurisdiction with an improper or erroneous exercise of jurisdiction. The Florida court had jurisdiction of the subject matter and the parties, including jurisdiction to determine and fix alimony. Jurisdiction to decide all matters pertaining to alimony included jurisdiction to decree rightly as well as wrongly, correctly as well as incorrectly, lawfully as well as unlawfully. "The test of a court's jurisdiction is whether or not it had power to enter on the inquiry, not whether its conclusion in the course thereof was correct, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly." 21 C. J. S., Courts, Section 27, pages 38-39; *St. Lawrence Co.* v. *Holt and Mathews*, 51 W. Va. 352, 41 S. E. 351; *Stewart* v. *Tennant*, 52 W. Va. 559, pt. 8 syl., 44 S. E. 223; *Adkins* v. *Adkins*, 142 W. Va. 646, 97 S. E. 2d 789; 11 M. J., Jurisdiction, Section 10, page 436. "Where a court has lawfully acquired jurisdiction of the parties and the subject matter of the litigation, subsequent departure by

the court from the rules of law or procedure in the exercise of that jurisdiction is not jurisdictional error." *Blankenship* v. *Mongini*, 105 W. Va. 530, pt. 2 syl., 143 S. E. 301.

I believe that the legal principles referred to herein establish the fact that the majority opinion, without warrant in law or precedent and contrary to basic legal and constitutional principles, arrogates to this Court the right to sit as a reviewing or appellate court in appraising and reexamining the mere correctness of the final judgment of a court of general jurisdiction in a sister state. The correctness of that judgment could not be collaterally challenged even in the State of Florida or in any other manner by any court, except by legally authorized appellate procedure, in the absence of a showing of fraud in the procurement of the judgment or lack of jurisdiction of the Florida court to pronounce it.

The decree pronounced by the Florida court is not contrary to the public policy of this state. I am not prepared to concede that the decree is erroneous either under the Florida law or the law of West Virginia. *Hale* v. *Hale*, 108 W. Va. 337, pt. 2 syl., 150 S. E. 748. If it is erroneous, voidable, or in part unauthorized by law, that is a matter which an appropriate appellate court in Florida may determine; but this Court may not. But even if the decree were contrary to the public policy of West Virginia, this Court, in accordance with authorities previously cited herein, would be required to accord such decretal judgment full faith and credit.

It is not correct to say, as does the majority opinion, that "jurisdiction" to grant alimony or support to a wife is dependent solely on divorce statutes. It is true that jurisdiction to grant a divorce is wholly a creature of statute and did

not exist at common law. *State ex rel. Hammond* v. *Worrell*, 144 W. Va. 83, 106 S. E. 2d 521. The validity of the Florida divorce, however, is not in question. But on the contrary, courts of equity independently of statutes pertaining to alimony, separate maintenance or otherwise, have jurisdiction to entertain suits for alimony, separate maintenance, or to compel a husband to support his wife. Alimony is not a mere creature of statute. *Lieberman* v. *Lieberman*, 142 W. Va. 716, 724, 98 S. E. 2d 275, 281; *Snyder* v. *Lane*, 141 W. Va. 195, 89 S. E. 2d 607; *Davis* v. *Davis*, 137 W. Va. 213, 70 S. E. 2d 889; *Wolford* v. *Wolford*, 133 W. Va. 403, 56 S. E. 2d 614; *Dailey* v. *Brennan*, 123 W. Va. 261, 14 S. E. 2d 617. "A court of equity, independently of proceedings for divorce, on the ground of inadequate remedy at law, may decree maintenance to a wife who has been deserted by her husband." *Lang* v. *Lang*, 70 W. Va. 205, pt. 1 syl., 73 S. E. 716, 39 L. R. A. (N. S.) 950, which case was decided prior to the enactment of our statutes providing for suits for separate maintenance. "Alimony is not merely an incident of divorce; it is a substantive right, which may be decreed to any wife under a given state of facts. This inherited power of equity courts, independent of any statutes, still exists and may be enforced in a suit brought for that purpose alone." *White* v. *White*, 181 Va. 162, 168, 24 S. E. 2d 448, 451. See also *Bray* v. *Landergren*, 161 Va. 699, 172 S. E. 252; *Heflin* v. *Heflin*, 177 Va. 385, 14 S. E. 2d 317, 141 A. L. R. 391; *Wilson* v. *Wilson*, 178 Va. 427, 17 S. E. 2d 397. "According to the weight of authority, a court of equity has inherent jurisdiction, independent of any action for divorce and irrespective of any statute, to entertain a suit by a wife for alimony or separate maintenance; * * *." 42 C. J. S., Husband and Wife, Section 614b, page 213.

The majority opinion undertakes to place its own construction not only on Florida statutes, but also upon the

Florida trial court's and the Florida appellate court's construction of such statutes. The majority opinion omits to refer to the case of *Hale* v. *Hale*, 108 W. Va. 337, 150 S. E. 748, which was cited in counsel's brief and relied upon in oral argument. In that case, this Court decided that, by a proper construction of the divorce statutes of this state, a trial court may provide for alimony during the entire life of the wife, "to be paid to her through her life, that is, to be paid by the husband while living and out of his estate after his death, * * *." Is it the position of the majority opinion that a Florida court may re-examine a decree of that nature entered by a West Virginia trial court, and declare it void merely because the Florida court disagrees with the construction placed on decisions of this Court or West Virginia statutes by a trial court of this state?

The majority opinion cites various authorities from other jurisdictions involving legal principles similar to those presented in the case of State ex rel. *Hammond* v. *Worrell*, 144 W. Va. 83, 106 S. E. 2d 521. In that case the Court held that since suits for divorce exist only by virtue of statute, a court in such a suit may adjudicate only in relation to such matters as are authorized by statute; that such statutes of this state do not provide for jurisdiction to partition real estate in a divorce suit; and that a decree in a divorce suit which undertakes to partition real estate is void for lack of jurisdiction. But courts of Florida are given statutory authority or *jurisdiction in divorce suits to make adjudications pertaining to alimony*. Therefore, decisions of the type referred to are wholly lacking in pertinency. Here I repeat that which is so fundamental in law, including numerous prior decisions of this Court: that is, jurisdiction to adjudicate in relation to alimony or any other subject includes jurisdiction to decide or adjudicate rightly as well as wrongfully, correctly as well as

incorrectly, lawfully as well as unlawfully. That is why appellate courts are established.

In my judgment, the majority opinion embodies a labored effort to justify a legally untenable proposition and represents a serious deviation from sound, well settled constitutional principles. I, therefore, respectfully dissent.

Filed July 6, 1962. Kenneth E. Hines, Clerk of the Supreme Court of Appeals of West Virginia.

APPENDIX F

Order of the Supreme Court of Appeals of West Virginia, denying a rehearing, entered October 22, 1962.

State of West Virginia:

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on the 22nd day of October, 1962, the following order was made and entered, to-wit:

Marguerite Loretta Aldrich, Plaintiff Below, Appellant,
12139 : vs.
William T. Aldrich, et al., Defendants Below, Appellees.

The petition for rehearing and reargument filed in this action having been maturely considered, a majority of the Court is of opinion to, and doth hereby deny the prayer of the petition and doth order that the final order entered herein be made absolute and certified as heretofore directed. Judge Calhoun would grant.

A true copy.

Attest: KENNETH E. HINES,
Clerk Supreme Court of Appeals.

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NO. 55

IN THE

Supreme Court of the United States

October Term, 1962

MARGUERITE LORETTA ALDRICH
Petitioner,

v.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, A Corporation, and JOHN C. WHITE, Executor of the Estate of M. S. Aldrich, Deceased,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BRIEF FOR RESPONDENTS WILLIAM T. ALDRICH, NATALIE ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., A CORPORATION, AND ALDRICH-SLICER COMPANY, A CORPORATION

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NO. 737

IN THE

Supreme Court of the United States

October Term, 1962

MARGUERITE LORETTA ALDRICH
Petitioner,

v.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, A Corporation, and JOHN C. WHITE, Executor of the Estate of M. S. Aldrich, Deceased,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BRIEF FOR RESPONDENTS WILLIAM T. ALDRICH, NATALIE ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., A CORPORATION, AND ALDRICH-SLICER COMPANY, A CORPORATION

Respondents William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company submit their brief in opposition to petitioner's prayer that a writ of certiorari be issued to the Supreme Court of Appeals of West Virginia to review the judgment of that court entered in the above styled case.

OPINIONS DELIVERED IN COURTS BELOW

Opinion of the Circuit Court of Putnam County, West Virginia, entered August 2, 1961, set forth in Appendix A beginning on page 21 of petition heretofore filed herein. Opinion of the Supreme Court of Appeals of West Virginia filed July 6, 1962, set forth in Appendix D beginning on page 25 of said petition and reported as *Aldrich v. Aldrich*, W. Va. , 127 S. E. 2d 385.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Article IV, Section 1 of the Constitution of the United States provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Title 28, Section 1738, United States Code, provides:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

Section 65.08, Florida Statutes, 1941, provides:

> "In every decree of divorce in a suit by the wife, the court shall make such orders touching the maintenance, alimony and suit money for the wife, or any allowance to be made to her, and if any, the security to be given for the same, as from the circumstances of the parties and nature of the case may be fit, equitable and just; but no alimony shall be granted to an adulterous wife."

Chapter 23894, Section 1, Laws of Florida—1947, amended Section 65.08, Florida Statutes, 1941, by adding thereto the following sentence:

> "In any award of permanent alimony the court shall have jurisdiction to order periodic payments or payment in a lump sum."

QUESTIONS PRESENTED

1. Do the provisions of Article IV, Section 1 of the Constitution of the United States, and Title 28, Section 1738, United States Code, require the courts of West Virginia to enforce a void decree of the Circuit Court of Dade County, Florida?

2. Was the decree of the Circuit Court of Dade County, Florida, entered in the divorce suit of Marguerite Loretta Aldrich v. M. S. Aldrich on May 31, 1945, as amended by decree entered on June 5, 1945, void insofar as it attempted

to impose upon the estate of M. S. Aldrich liability for alimony to accrue after his death?

STATEMENT OF THE CASE

These respondents accept petitioner's statement as substantially correct, and adequate for argument of the issues here involved, except for the following inaccuracies:

1. On page 5 of the petition it is stated that, "The Circuit Court of Putnam County held that the decree of the Florida court was invalid and unenforceable in so far as it attempted to impose an obligation to pay alimony on the estate of M. S. Aldrich." The Circuit Court of Putnam County in fact held that the Florida decree was invalid to the extent that it attempted to impose on the estate of M. S. Aldrich liability for alimony *accruing after the death* of M. S. Aldrich.

2. On page 6 of the petition in discussing the ruling of the majority of the Supreme Court of Appeals of West Virginia, petitioner charges the West Virginia Court with reviewing the "merits" of the Florida judgment. In fact the majority of the West Virginia Court confined its examination and consideration of the Florida judgment to a determination of the jurisdiction of the Florida court, under Florida law, to enter the judgment.

ARGUMENT

1. A judgment void in the state of rendition will not be enforced by the courts of another state.

It is well settled that a judgment generally is entitled to receive the same faith and credit in every other state that is accorded to it where rendered. Therefore, if a judgment is valid and conclusive in the state where rendered it will

be enforced in all other states; however, if it is invalid and unenforceable in the state where rendered, the full faith and credit provisions do not prevent its being attacked collaterally in another state. See 50 C.J.S. Judgments, page 473, Section 889, and authorities therein cited.

2. A judgment entered by a court without jurisdiction is void.

It is essential to the rendition of a valid judgment that it be given by a court of competent jurisdiction. A judgment beyond the jurisdiction of the court is null and void. As stated in *Vallely* v. *Northern Fire and Marine Ins Co.*, 254 U. S. 348, 65 L. Ed. 297, 41 S. Ct. 116,

> "Courts are constituted by authority, and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal."

. See also 31 Am. Jur., Judgments, Page 68, Section 406.

3. A judgment is void if it is beyond the powers granted to the court by the law of its organization, even though the court has jurisdiction over the parties and subject matter.

A court may not render a judgment beyond the limits of its authority. For example, a court limited in its jurisdiction with reference to the amount in controversy may have jurisdiction of the parties and of the subject matter, but if it enters judgment in an amount exceeding its jurisdictional power, that part of the judgment in excess of its power is void.

The point just made has long been recognized by this Court, which in *United States* v. *Walker*, 109 U. S. 258,

27 L. Ed. 927, 3 S. Ct. 277, decided in 1883, held that:

> "Although a court may have jurisdiction over the parties and the subject matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void."

In support of such holding the court cited *Windsor* v. *McVeigh*, 93 U. S. 274, 23 L. Ed. 914, decided in 1876, in which Mr. Justice Field stated the law upon the subject as follows:

> "The doctrine invoked by counsel, that when a court has once acquired jurisdiction it has a right to decide every question which arises in the case, and its judgment, however erroneous, cannot be collaterally assailed, is undoubtedly correct as a general proposition; but, like all general propositions, is subject to many qualifications in its application. - - -
>
> "The doctrine stated by counsel is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to established modes governing the class to which the case belongs, and does not transcend, in the extent or character of its judgment, the law which is applicable to it."

The law as thus stated has been followed in State and Federal courts. In *Fishel* v. *Kite*, (1938) 101 F. 2d 685, the United States Court of Appeals for the District of Columbia, citing *United States* v. *Walker*, supra, and *Windsor* v. *McVeigh*, supra, held:

> "A collateral attack is not available except upon the theory that the judgment is void and unless the record reveals that the court had no jurisdiction of the parties or of the subject matter, *or that the judgment rendered was beyond the authority of the court under the law.*" (Emphasis supplied.)

The rule of *Windsor* v. *McVeigh* was followed in *Armstrong* v. *Obucino*, 300 Ill. 140, 133 N. E. 58, and as there announced is quoted with approval in *Illinois National Bank* v. *United States*, (1959), 173 F. Supp. 475, at 492, as follows:

> "'The statement has very frequently been made that, where a court has jurisdiction of the parties and the subject-matter, its decree, however, erroneous, can only be attacked on appeal or error; but the rule is subject to an exception equally well settled—that a decree may be void because the court has exceeded its jurisdiction. . . . Courts are limited in the extent and character of their judgments, and if they transcend their lawful powers their judgments and decrees are void, and may be collaterally impeached, wherever rights claimed under them are brought in question. The doctrine that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause and its judgment or decree, however erroneous, cannot be collaterally assailed, is only correct, when the court proceeds according to the established modes governing the class to which the case belongs, and does not transcend in the extent and character of its judgment or decree the law or statute which is applicable to it'"

It is interesting to note that the last sentence of the foregoing quotation is virtually identical to the words of Mr. Justice Field in *Windsor* v. *McVeigh*, supra, decided 83 years earlier.

See also 31 Am. Jur., Judgments, page 70, Section 407.

4. Under Florida law, a decree for payment of alimony to continue after the death of the husband is, in the absence of express agreement between the parties, beyond the power of the court, and is therefore void.

In *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, the court said, on page 238:

> "As a general rule the obligation to pay alimony dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state."

The *Allen* case was decided in 1933. In 1953 the Florida court affirmed the rule enunciated in *Allen* when it held, in *Underwood* v. *Underwood*, ... Fla. ....., 64 So. 2d 281, at 288:

> "By its very nature, alimony is limited to the lifetime of the husband."

The case of *Johnson* v. *Every*, ... Fla. ....., 93 So. 2d 390, decided in 1957, involved interpretation of the terms of a separation agreement which was subsequently incorporated in a divorce decree. Excerpts from the majority opinion in the *Johnson* case are quoted on pages 13 and 14 of petitioner's brief in support of her argument that the Florida court in the case at bar did have the power to decree payment of alimony after the death of M. S. Aldrich. If considered out of context some of the language used by the Florida court would seem to support petitioner's argument; however, the effect of the case as a whole is to support the position of the respondents.

In the *Johnson* case the wife sued the executor of her former husband's estate for installment payments which had accrued after his death. The decree, embodying the terms of a property settlement agreement made two years previously, provided that monthly alimony payments " - - -

shall cease, upon the death of the plaintiff or upon her remarriage, - - -." The issue upon which the decision turned was the interpretation of the quoted words. The four-judge majority held that the words indicated an intent on the part of the lower court to charge the husband's estate with alimony payments if he predeceased his ex-wife, and that since such charge was based upon a prior contract between the parties it would be enforced. In the course of the opinion the Court said:

> "- - - In the absence of an express contract or a provision in a decree *such as the one before us*, a divorced husband's liability for alimony terminates with his death. On the other hand where the decree or property settlement agreement expressly provides for the continuation of the payments 'until death of the wife' then the husband's estate remains liable - - -." (Emphasis supplied.)

While the court used the disjunctive "or" in referring to an "express contract" or a "decree," it was the element of agreement between the parties which determined the majority decision. The decree which was "the one before" the court was based on agreement between the parties; therefore the case holds no more than this: If there is an agreement, it may be expressed in a contract, in the decree, or in both; but if there is no agreement, a decree calling for payment of alimony after the death of the husband is not valid. Any other conclusion cannot be reconciled with the decision in *Allen* v. *Allen*, supra, quoted with approval in the majority opinion in *Johnson* v. *Every*. The accurate statement of the holding in *Johnson* is, we submit, found in Point 2 of the Syllabus, as follows:

> "Where under *property settlement agreement and divorce decree* it was provided that weekly payments

> to wife were to be terminated only by death of wife or her remarriage, husband's liability for such payments did not terminate on his death and his estate was liable for them." (Emphasis supplied.)

A minority of three judges in *Johnson* v. *Every* dissented from the majority opinion, on the ground that the wording of the separation agreement and divorce decree did not indicate beyond doubt that it was the intention of the parties to bind the husband's estate after his death. In the case at bar we are not interested in the matter of interpretation since our issue concerns the power, rather than the intent, of the Florida divorce court. However, part of the dissenting opinion throws considerable light on our issue, and we quote from it as follows:

> "An examination of the opinions in the two Florida cases which it is insisted are in point, i.e., *Underwood* v. *Underwood*, - - - and *Allen* v. *Allen*, - - - discloses that in each of said cases there was a clear, unambiguous covenant or agreement on the part of the husband to bind his personal representative after his death. It is our conclusion that the general rule to the effect that 'the obligation to pay alimony dies with the person' should not give way in a case of this type which discloses no independent equities in favor of the erstwhile wife, unless by the terms and covenants of the separation agreement the husband, by express language which admits of no doubt, makes his obligation binding upon his estate.
>
> "We do not decide, since the question is not presented, whether an award of this type of 'pure' alimony could be made by the court to extend beyond the lifetime of the husband, in the absence of an agreement of the parties to that effect. There is no statute in this state so providing; and it has been

> said that 'generally such power is considered as not existent, in the absence of any statute or agreement between the parties.' See the statement of the annotator in 39 A. L. R. 2d at page 1409, and cases cited."

The case of *Deigaard* v. *Deigaard*, Fla. App. 1959, 114 So. 2d 516, involved a divorce suit in which a decree of the trial chancellor provided for monthly payments of alimony and a lump sum payment of $5,000 in lieu of post-demise alimony to be paid by the estate of the husband. The District Court of Appeal of Florida, Third District, citing *Allen* v. *Allen*, supra, *Underwood* v. *Underwood*, supra, and *Johnson* v. *Every*, supra, held invalid that portion of the decree which provided for the charge of $5,000 against the husband's estate, and in the opinion said:

> "In addition, a divorced husband's liability for alimony generally terminates with his death. There was no expressed contract or agreement between the parties that alimony should continue beyond the life of the husband, and in the absence of statutory authority, we conclude that *the decree in this respect is without legal basis.*" (Emphasis supplied.)

Thus it is abundantly clear that in Florida, as elsewhere, the obligation to pay alimony dies with the husband unless there is (a) a specific agreement to the contrary between the parties, embodied in a separation contract and or a divorce decree, or (b) a statute authorizing continuation of payments after the death of the husband. No separation contract is involved in the case at bar, and the decree of the Circuit Court of Dade County is, in its own words, for "permanent alimony," and not for an amount agreed upon by the parties. Examination of the Florida statute in effect at the time the decree of the Circuit Court of Dade County was entered in the case at bar discloses no authorization

for the entry of that portion of the decree which respondents contend is void. This is also the statute which was before the Florida courts at the times of decision of all of the Florida cases hereinbefore cited, except for the 1947 amendment, and we submit that such amendment has no effect upon the matter under consideration.

CONCLUSION

Petitioner seeks a review by this Court on the ground that the questions raised by her petition are of "great general and public interest." Such would indeed be the case if the courts of West Virginia had refused in any manner to accord to a court of a sister state the full faith and credit guaranteed by the Constitution and implemented by the statutes of the United States. However, in evaluating the validity of the Florida judgment which petitioner sought to enforce in West Virginia, the courts of the latter State have followed a rule of law announced by this Court many years ago, and since reaffirmed in numerous cases by this and other courts. The departure from, rather than the observance of, such rule would do violence to established law and precedent.

Whether or not the West Virginia courts have correctly interpreted and applied Florida law in determining the validity of the Florida judgment is, we submit, not a question of such general interest or importance as to command the attention and review of the Supreme Court of the United States. However, the Florida decisions relied upon by the Supreme Court of Appeals of West Virginia amply

justify and sustain its interpretation of Florida law, and we find no Florida decisions to the contrary.

Respectfully submitted,

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March 20, 1963

No. 33

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

MARGUERITE LORETTA ALDRICH,
Petitioner,

vs.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, A Corporation, AND JOHN C. WHITE, Executor of the Estate of M. S. Aldrich, Deceased,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

REPLY BRIEF OF PETITIONER, MARGUERITE LORETTA ALDRICH

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No. 737

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

MARGUERITE LORETTA ALDRICH,
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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

REPLY BRIEF OF PETITIONER, MARGUERITE LORETTA ALDRICH

Counsel for the respondents make four points in their brief. We shall answer them in the order in which they appear, first quoting the proposition of counsel verbatim.

"1. *A judgment void in the state of rendition will not be enforced by the courts of another state.*"

I most heartily agree with this statement. The pertinent question is just when is a judgment void? It is well settled that when the parties to litigation are before the court and the matter at issue or subject matter of the litigation is one which the court may determine, then the court has jurisdiction. This means that the court may decide the case either rightly or wrongly. If a wrong decision is made, then the adverse party may, if he chooses, correct it on appeal. If he does not take advantage of this, then the judgment is final and must stand.

"2. *A judgment entered by a court without jurisdiction is void.*"

This proposition is also a correct one. A typical example of want of jurisdiction is failure to have the proper parties in court. Another typical example is where the court does not have jurisdiction to pass on the subject matter. Such would be the case if a state court undertook to pass on a maritime matter. Maritime matters are exclusively within the jurisdiction of the federal courts. The same is true of crimes for violation of federal statutes.

Counsel, in support of the above proposition, cite the case of *Vallely* v. *Northern Fire & Marine Ins. Co.*, 254 U. S. 348, 65 L. Ed. 297, 41 S. Ct. 116. In this case, the defendant, Northern Fire & Marine Insurance Co., was declared an involuntary bankrupt in the U. S. District Court for the State of North Dakota. There was a federal statute in effect at the time which provided that an insurance company could not be adjudged an involuntary bankrupt. After the adjudication had been made and some orders entered in the

course thereof, the court's attention was called to the federal statute and a motion was made to vacate the bankruptcy adjudication. This Court, in the opinion referred to above, rightly held that the bankruptcy court lacked jurisdiction from the outset because a federal statute forbade the very thing which had been done. This is a farcry from the proposition at issue in the instant case.

"3. *A judgment is void if it is beyond the powers granted to the court by the law of its organization, even though the court has jurisdiction over the parties and subject matter.*"

This proposition is clearly wrong. When a court has jurisdiction of the parties and of the subject matter, it necessarily follows that the court may make either a correct decision or a wrong decision. The remedy when an incorrect decision is made is to take it through the regular channels of appeal. We adopt as our argument the dissenting opinion of Judge Calhoun, the most forceful part of which is found in the last paragraph on page 49 of our petition for certiorari. A mere erroneous ruling, if such there be, does not deprive the court of jurisdiction.

Counsel in support of the above proposition cite *United States* v. *Walker*, 109 U. S. 258, 27 L. Ed. 927, 3 S. Ct. 277. This was an action by an administrator *de bonis non* against the surety of the deceased administrator who preceded him in the administration of the estate. The court held that under the statute the administrator *de bonis non* had title only to such assets as had not been administered and that only creditors and distributees could sue for assets turned into cash and the cash not accounted for, which in effect is damages. This case was instituted before a justice of the Supreme Court of the District of Columbia. It was ap-

pealed to this Court where the disposition of the case referred to above was made. The matter of full faith and credit of a judgment of a sister state was not in issue.

Counsel for the respondents quote from the opinion but omit the partinent part thereof. The full statement of the court, including that quoted and that not quoted by counsel for respondents follows:

> "* * * Although a court may have jurisdiction over the parties and the subject matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void. The limitation was well expressed by Mr. Justice Swayne in Cornett (Nash) vs. Williams, 20 Wall. 226, [87 U. S. XXII, 254] when he said: 'The jurisdiction having attached in this case, everything done, within the power of that jurisdiction, when collaterally questioned is held conclusive of the rights of the parties unless impeached for fraud.'"

It appears, therefore, that the case supports our position not theirs. Counsel for the respondents picked up the wrong book.

Counsel in support of the above proposition also cite *Fishel* v. *Kite*, 101 F. 2d 685. This case was started by an action on a note on which judgment was rendered for the plaintiff by the District Court of the District of Columbia. A writ of *fieri facis* was subsequently sued out on the judgment following which a motion was made to quash the writ. An appeal was taken from the District Court to this Court. This again did not involve the full faith and credit clause of the Constitution of the United States. The action originated in a United States court and was prosecuted on appeal through the regular channels provided for appeals. In dis-

cussing the merits of the case, in the latter part of the opinion it was said:

> "* * * In our view, the statutory provisions in the present case were not jurisdictional. The court had jurisdiction over the parties and the subject matter. It had power to enter a judgment. If it erred in holding that a case had been made, under either its inherent power or statutory authority, still it cannot be said that it has usurped jurisdiction or that its order is an absolute nullity."

This case, therefore, is authority for our position and not the position of the respondents.

Counsel also cite and quote *Armstrong* vs. *Obucino*, 300 Ill. 140, 133 N. E. 58. This was an appeal to the Supreme Court of Illinois from a decision of the Circuit Court of Cook County of that State. The appeal was prosecuted on the theory that the lower court had erred in exceeding its statutory powers. A deed had been made in a foreclosure suit when no statutory authority existed for such type of action. The court rightly held that both the sale and the deed made in pursuance thereof were void. This again is not authority for the proposition before this Court since there is no question about full faith and credit of a judgment of a court of another state.

"4. *Under Florida law, a decree for payment of alimony to continue after the death of the husband is, in the absence of express agreement between the parties, beyond the power of the court, and is therefore void.*"

This proposition is erroneous. In the note of argument accompanying our petition, we set out the finding of the court in *Johnson* vs. *Every*, 93 So. 2d 300 (Florida), in

which the court said: "* * * in the absence of an express contract or a provision in a decree such as the one before us, a husband's liability for alimony terminates with his death." The Supreme Court of that state has never gone on record to the contrary. The Supreme Court of West Virginia has held that the West Virginia courts may make such a valid decree. *Hale* vs. *Hale*, 108 W. Va. 337, 150 S. E. 748. In the instant case, the majority opinion of the West Virginia Supreme Court holds that Florida courts cannot.

In this connection, it is pertinent to note that the Circuit Court of Dade County, Florida, retained jurisdiction of the instant case for the purpose of enforcing the decree. This being the case, counsel for the respondents, if they so desire, may move that Court to vacate the part of the decree which they now say is void. In this way, they could get a ruling from the Florida court. After all, the courts of Florida are the proper forum for deciding what the courts of that State may do under its statutes.

It would create a pandemonium to permit the courts of each state to pass on the merits of the judgments of sister states. To prevent such a condition Section 1 of Article 4 was put in the Constitution. This part of the Constitution is not to be treated lightly. Nor should it be invalidated to suit what respondents say is a hard case.

We respectfully submit that the writ of certiorari herein prayed for should be awarded.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. [redacted] 55

MARGUERITE LORETTA ALDRICH,
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vs.

WILLIAM T. ALDRICH, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

PETITIONER'S BRIEF

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SHAFER PRINTING COMPANY, CHARLESTON, WEST VIRGINIA

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 737

MARGUERITE LORETTA ALDRICH,
Petitioner,
vs.
WILLIAM T. ALDRICH, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

PETITIONER'S BRIEF

I

OPINION

The opinion of the Supreme Court of Appeals of West Virginia is reported in 127 S. E. 2d 385. It appears in the printed record at pages 41-65. The opinion of the Circuit Court of Putnam County is on page 37 of the printed record.

II

JURISDICTION

Jurisdiction of this Court to review the judgment of the

Supreme Court of Appeals of West Virginia is invoked under Article 4 Section 1 of the Constitution of the United States.

Judgment of the Supreme Court of Appeals of West Virginia was entered on October 22, 1962. Petition for writ of certiorari was filed with this Court on January 10, 1963. This Court granted certiorari on April 15, 1963. ..... U. S. ....., 10 L. ed. 2d 128, ... S. Ct. ..... (R. 68).

III

CONSTITUTIONAL PROVISION INVOLVED

This action involves Article 4, Section 1 of the Constitution of the United States which reads as follows:

> "Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and proceedings shall be proved, and the Effect thereof."

IV

QUESTIONS PRESENTED

The questions presented in this case are:

1. Whether the final judgment of the Circuit Court of Dade County, Florida, entered in the case of Marguerite Loretta Aldrich vs. M. S. Aldrich on May 31, 1945, as amended on June 5, 1945, will be enforced in the courts of West Virginia.

2. Whether the judgment of the Florida court is entitled to full faith and credit in the State of West Virginia under Article 4, Section 1 of the Constitution of the United States.

3. Whether the courts of West Virginia may review the judgment of the Florida court and pass on whether that Court decided the case correctly.

V

STATEMENT OF THE CASE

This is the aftermath of a divorce suit tried in the Circuit Court of Dade County, Florida, in which the petitioner, Marguerite Loretta Aldrich, was plaintiff and M. S. Aldrich was defendant. Both parties were before the court and the case appears to have been bitterly contested. No jurisdictional question was raised as to the subject matter or the parties in the court below and no such question is presented to this Court.

The petitioner and M. S. Aldrich were married in 1918. Differences arose between them following which they were divorced in Dade County, Florida, on May 31, 1945. This decree, a copy of which is in the case as "Plaintiff's Exhibit A" awarded alimony to the petitioner in the sum of $250.00 per month so long as she lived and made the same a charge against the estate of M. S. Aldrich in the event of his death: This part of the decree reads as follows:

"4. That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00 as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court of Miami, Dade County, Florida, and in the event the defend-

ant, Moriel Simeon Aldrich, shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto;". (R. 16).

On June 5, 1945, M. S. Aldrich petitioned the Circuit Court of Dade County for a rehearing which was denied. The Court, however, reduced the alimony from $250.00 to $215.00 per month. See "Plaintiff's Exhibit B." (R. 18).

M. S. Aldrich died testate on May 29, 1958, while a resident of Putnam County, West Virginia. His last will and testament was duly probated and the estate was put in line for settlement. The petitioner filed a claim for alimony which accrued after his death.

M. S. Aldrich, at the time of his death, owed no alimony to the petitioner, he having kept his payments current. Before terminating his earthly pilgrimage he prepared for this event by transferring practically all of his property to his son the defendant, William T. Aldrich. Although reputed to be a man of wealth, the appraisals of his estate showed assets in the amount of only $7,283.50, which was inadequate to meet future obligations of the Florida divorce decree. (R. 20-22).

The petitioner filed this action in the Circuit Court of Putnam County, West Virginia, for the purpose of having her rights determined and having certain allegedly fraudulent transfers and conveyances made by M. S. Aldrich to his son, William T. Aldrich, and a corporation known as Aldrich-Slicer Company, set aside and the assets put back in the estate of M. S. Aldrich so that funds would be available for future payments of alimony. She predicated her claim on the Florida divorce.

William T. Aldrich is the son of M. S. Aldrich and the petitioner. Natalie Aldrich is the wife of William T. Ald-

rich. Angela Aldrich is the widow of M. S. Aldrich. M. S. Aldrich & Associates, Inc., is a corporation which was principally, if not solely, owned by M. S. Aldrich during his lifetime or until a short time prior to his death. Aldrich-Slicer Company is a corporation organized by William T. Aldrich. John C. White is executor of the M. S. Aldrich estate.

The petitioner charged that M. S. Aldrich, prior to his death, transferred a lucrative insurance business to his son, William T. Aldrich, one of the defendants herein, and to Aldrich-Slicer Company, a corporation, owned by his son, and thereby rendered his estate unable to meet the alimony payments which fell due and were to accrue after his death. She also charged that he owned a farm in Putnam County, title to which he had put in his son, Edwin M. Aldrich, in 1942, and which had been conveyed by Edwin to William T. Aldrich, in 1946. (R. 24-26). Both deeds were executed without consideration. She prayed that these transfers and conveyances be set aside and an accounting made. An answer was filed by William T. Aldrich in which he denied the fraudulent charges.

The defendants with the exception of Angela Aldrich, who had not made an appearance in the case, filed a motion for judgment on the pleadings. In order that the legal propositions might be determined with as little expense as possible, a stipulation was entered into and filed setting out that no alimony was owed at the time of the death of M. S. Aldrich. It was also stipulated that there was no constructive or actual fraud in the conveyance of the Putnam County real estate. It was contended by the petitioner that despite the conveyances, the real estate was actually owned by M. S. Aldrich at the time of his death and she so charged in her complaint.

The Circuit Court of Putnam County held that the decree

of the Florida court was invalid and unenforceable in so far as it attempted to impose an obligation to pay alimony on the estate of M. S. Aldrich. (R. 37). An appeal was awarded by the Supreme Court of Appeals of West Virginia to this judgment. Upon a hearing in that Court the judgment was affirmed with one of the four members filing a vigorous dissent.

The reason assigned by the Supreme Court of Appeals of West Virginia in the majority opinion for not enforcing the Florida decree was that the Florida court erred in rendering the judgment in so far as it made the petitioner's alimony a charge against the estate of M. S. Aldrich after his death. This means that a West Virginia court may review the merits of a judgment of a sister state and refuse to enforce it, providing, in its opinion, the court of the sister state erred in its interpretation of the law. This means that the courts of West Virginia will not give full faith and credit to the judicial proceedings of other states.

VI

POINTS ARGUED IN THIS BRIEF

1. Full faith and credit should be accorded to the Florida judgment.

2. Florida courts hold that alimony may be made a charge against a husband's estate.

3. The Florida judgment in question is not repugnant to the policy or laws of West Virginia since like decrees may be entered and enforced by the courts of this State.

4. The questions raised are of great general and public interest.

VII

ARGUMENT

1. Full faith and credit should be accorded to the Florida judgment.

An excellent statement of the general law relating to this point is found in Volume 30A Am. Jur. Section 239 on Judgments which reads as follows:

> "Conclusiveness and Effect.—The full faith and credit clause has established throughout the federal system the common-law principle that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered. A judgment of a sister state is conclusive as to the nature and amount of the claim upon which it was based. Thus, under the full faith and credit clause of the Constitution of the United States, a judgment rendered by a court of one state is, in the courts of another state of the Union, binding and conclusive as to the merits adjudicated. It is improper to permit an alteration, modification, or reexamination of the judgment, or of the grounds on which it is based, or of the merits of the original cause of action. Thus, jurisdiction to render the judgment having been established or being presumed, the full faith and credit clause precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment is based. Whatever mistake of law may underlie a judgment, it is, under the full faith and credit clause, conclusive as to all the media concludendi. The general rule is that if the judgment has locally the faith and credit of evidence of the highest nature, that

is to say conclusive evidence, it must have the same faith and credit in every other court, and in this respect it has been declared that where a defendant has had full notice, the judgment is presumed to be conclusive in the state of its rendition. However, if a judgment is not conclusive in the state of its rendition, it is equally inconclusive in another state.

"A valid judgment rendered in one state will be recognized in another state as imposing upon the party against whom it was rendered a duty to obey the judgment, or as determining interest in a thing or in the status of the parties. However, no execution can issue directly upon a foreign judgment, but such judgment must be sued upon like any other debt. A foreign judgment cannot of its own force create any lien upon property in a state other than that of its rendition."

The case of *Milliken* vs. *Meyer*, reported in 311 US. 457, 312 US 712, 85 L. ed. 269, 61 S. Ct. 339, 548, 132 ALR 1357, deals with the proposition of whether full faith and credit shall be given by the courts of one state to the judgment of a sister state. In this case one W. B. Milliken instituted an action in the State of Wyoming against Violet L. Meyer individually and as Administratrix of the Estate of R. D. Meyer, praying for an accounting of certain profits in an old development venture. Meyer, who was a resident of Wyoming, was served personally with process in accordance with a statute while outside the State. The Wyoming court rendered a judgment in favor of Milliken who later brought an action on the judgment in the State of Colorado. The Supreme Court of the State of Colorado held that judgment of the Wyoming Court was null and void because of an irreconcilable contradiction between the findings and the decree. This court granted a writ of certiorari to the

Colorado court. In reversing the judgment of that court it was said:

> "Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry. Grover & B. Sewing Mach. Co. v. Radcliffe, 137 US 287, 34 L. ed. 670, 11 S. Ct. 92; Adam v. Saenger, 303 US 59, 82 L. ed. 649, 58 S. Ct. 454. But if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.' Adam v. Saenger, supra (303 US at p. 62, 82 L. ed. 651, 58 S. Ct. 454). In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. Fauntleroy v. Lum, 210 US 230, 52 L. ed. 365, 48 S. Ct. 142, 53 ALR 1141; Titus v. Wallick, 306 US 282, 83 L. ed. 653, 59 S. Ct. 557. Whatever mistakes of law may underlie the judgment (Cooper v. Reynolds, 10 Wall. (US) 308, 19 L. ed. 931) it is 'conclusive as to all the media concludendi.' Fauntleroy v. Lum, supra (210 US at p. 237, 52 L. ed. 1012, 28 S. Ct. 641.)"

This Court in *Johnson* vs. *Muelberger*, 71 S. Ct. 474, 340 US 580, 95 L. ed. 552, considered the right of the courts of New York to modify or nullify a Florida divorce decree. In that case a widower by the name of Johnson married a second time. This new wife brought an action for divorce in the State of Florida in which he appeared and made an unsuccessful defense. He subsequently remarried. While a resident of New York, he died and left his entire estate to his daugh-

ter. His third wife renounced the will and claimed a third of the estate. The daughter charged that the divorce from the second wife in Florida was illegal and consequently the third marriage was void. In dealing with her contention this Court said:

> "We conclude that Florida would not permit Mrs. Muelberger to attack the Florida decree of divorce between her father and his second wife as beyond the jurisdiction of the rendering court. In that case New York cannot permit such an attack by reason of the Full Faith and Credit Clause. When a divorce cannot be attacked for lack of jurisdiction by parties actually before the court or strangers in the rendering state, it cannot be attacked by them anywhere in the Union. The Full Faith and Credit Clause forbids."

A very potent statement of the law relating to the effect of Article 4, Section 1 of the Constitution is found in *Sherrer* vs. *Sherrer*, reported in 68 S. Ct. 1087, 334 U. S. 343, 92 L. ed. 1055 1 ALR 2d 1355, at 1363. This case deals with the duty of the Massachusetts court to respect a Florida divorce decree. The husband had appeared in the case and made an unsucces-ful attempt to contest it. In holding that the Massachusetts court should respect the results of the Florida decree, this court speaking through Chief Justice Vinson said:

> "x x x Nor do we understand the decisions of this Court to support the propo ition that the obligation imposed by Article 4, § 1 of the Constitution and the Act of Congress passed thereunder, amounts to something less than the duty to accord full faith and credit to decrees of divor e entered by courts of sister States. The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggrega-

> tion of independent, sovereign States into a nation. If in its application local policy must at times be required to give way, such 'is part of the price of our federal system.' Williams v. North Carolina, 317 US 287, 302, 87 L. ed. 279, 288, 63 S. Ct. 207, 143 ALR 1273 (1942)."

We respectfully submit that the Supreme Court of West Virginia cannot rightfully undermine a judgment of a sister state on grounds not cognizable in the state where the judgment was rendered. We say not cognizable because no court sitting in the State of Florida could now invalidate the decree of the Circuit Court of Dade County entered on June 5, 1945, or refuse to enforce it. That decree settled the rights of the parties once and for all and became final when not appealed from. It barred all future litigation and settled not only the issues raised at the trial but all issues which could have been raised. The West Virginia Court was, therefore, powerless to retry the case.

The Supreme Court of Appeals of West Virginia prior to the ruling complained of adhered to Article 4, Section 1 of the Constitution of the United States by giving full faith and credit to the judgments of sister states. An able pronouncement of this rule was made in *Stewart* vs. *Stewart*, 27 W. Va. 167. That case dealt with a decretal judgment by the Court of Common Pleas of Columbiana County, Ohio, for alimony in a suit brought by a wife against her husband in which a divorce was not prayed for and not granted. The plaintiff, wife, undertook to enforce this decree in the Circuit Court of Hancock County, West Virginia, against a tract of land owned by the defendant. The defense interposed was that the Courts of West Virginia could not enter a judgment for alimony unless the same was supported by a

decree of divorce. In disposing of this matter, the court on page 173 of the opinion said:

"But it is not on the ground that such suits have been maintained in many States, that we would enforce a decree for such cause in our own courts, nor would we sustain it because it agreed with our policy, nor refuse to enforce it here because it is hostile to our policy. The reason why we would enforce a decree, rendered by a court of competent jurisdiction in another State, is the fact that the Constitution of the United States requires us to do so. For the wisest purposes the States when they formed and adopted the Constitution of the United States provided in Section 1 of Article IV: 'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. If this clause had not been inserted in the Constitution and rigidly enforced by the judiciary in all the States, our relations as States to each other would have been anything but harmonious. Citizens by passing from one State to another could escape the effect of their contracts and obligations. It is not a question of State policy, whether we will or will not give effect to the judgments of courts of competent jurisdiction of other States. It is a question, whether we will in good faith live up to the constitutional obligations, which we have assumed. In Gilchrist v. W. Va. O. & O. L. Co., 21 W. Va. 115, we decided, that where a judgment rendered in another State is sought to be enforced in a court in this State, our courts may inquire into the jurisdiction of the court, which rendered it, and if it appear that the court, which rendered the judgment, had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, it is valid and binding in this State; that in deciding what effect

> a judgment rendered in another State is to have in this, it must be regarded as well settled, that it must have the same effect here, as it had in the State, where it was rendered. It is not an open question, whether we will enforce the judgments and decrees of another state rendered by courts of competent jurisdiction having jurisdiction to render such judgment or decree. The general rule is, as we have stated it, if there are any exceptions, I have not been able to find them. I do not say there can be none. If the court of common pleas of Columbiana County had jurisdiction to pronounce the decree rendered there, and sought to be enforced here, we must give full faith and credit to it and enforce it here."

This holding is buttressed by a long line of cases decided since that time among which are *Campbell* vs. *Switzer*, 82 S. E. 319, 74 W. Va. 509; *Wells-Stone Mercantile Co.*, vs. *Truax*, 29 S. E. 1006, 44 W. Va. 531; *Crumlish's Admr.* vs. *Central Improvement Co.*, 18 S. E. 456, 38 W. Va. 390; *Sayre's Adm'r* vs. *Harpold*, 11 S. E. 16 33 W. Va. 553; *Grinrod Process Company* vs. *Rothwell*, 189 S. E. 100, 117 W. Va. 709; *Pukas* vs. *Pukas*, 42 S. E. 2d 11, 129 W. Va. 765; *Gavenda Bros.* vs. *Elkins Limestone* (W. Va.), 116 S. E. 2d 910; and *Bennett* vs. *Bennett*, 70 S. E. 2d 894, 137 W. Va. 179.

2. *Florida courts hold that alimony may be made a charge against a husband's estate.*

The case of *Johnson* vs. *Every*, (Florida), 93 So. 2d 390, appears to settle this question. This was a proceeding brought by a divorced wife for a post decretal order requiring the ancillary administrator of the estate of the deceased former husband to pay alimony which accrued under a divorce decree and property settlement. The decree of di-

vorce provided for payments until death or remarriage of the wife and the payments in controversy accrued after the husband's death. In disposing of this matter the Florida court said:

> "We subscribe to the proposition that in the absence of an express contract or a provision in a decree such as the one before us, a divorced husband's liability for alimony terminates with his death. On the other hand where the decree or property settlement agreement expressly provides for the continuance of the payments 'until death of the wife' then the husband's estate remains liable for the obligation in the same manner as it is liable for any other legitimate obligation outstanding at the time of his death. Here there was a provision in the final decree as well as in the property settlement agreement to the effect that the payments would be made during the life of the wife or until she remarried. She is still living and she is not remarried, and consequently, the conditions for the termination of the weekly payments have not occurred.
>
> "This was in effect a part of our holdings in Underwood vs. Underwood, 64 Southern 2d 281; and Allen vs. Allen, 111 Fla., 733, 150 S. E. 237, 238. In the last case cited, we held: 'As a general rule the obligation to pay alimony dies with the person, but the agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this State.'"

You will note that the disjunctive "or" is used. This means that either a contract of settlement or a holding of the court in the divorce decree is sufficient to establish liability on the estate.

Further on in the opinion the court said:

> "While we concur in the view of the trial Chancellor that the alimony payments cannot be increased either retrospectively or prospectively after the death of the husband, we cannot concur in the view that as a matter of law his estate is not liable for the amount fixed by the final decree in a situation such as the one presently before us. See Jennings vs. First National Bank, 116 W. Va. 409, 180 S. E. 772, 100 A. L. R. 494, 500; and 17 Am. Jur. Divorce and Separation, Sec. 733, p. 550."

The holding in *Johnson* vs. *Every*, *supra*, was based on a contract in the nature of a property settlement between the husband and wife, executed during a suit for divorce. The husband agreed to pay the wife alimony in the amount of twenty-five dollars per week for the duration of her life, to be terminated upon her death or remarriage to any person other than the defendant. This language was incorporated in the decree of divorce. *Nothing was said about enforcing payments against the defendant's estate should he predecease the wife.* He did predecease the wife and she sought to enforce liability against his estate. The primary proposition before the Florida court was the interpretation of the contract and whether the parties intended to bind the husband's estate for payments which might accrue after his death. The court split on the interpretation of the contract, the majority holding that the contract was sufficiently broad to hold the estate liable. The minority said that the parties did not intend to bind the estate. The court, therefore, was dealing with the construction of a contract rather than a legal principle. The court did lay down the proposition that the estate of a deceased husband could be bound for alimony by an express contract or by the provisions of a decree. In the instant case, express provisions were incorporated in

the decree specifically stating that the decedent's estate would be liable for future payments. This shows the intention of the court which fixed the rights of the parties.

We submit that courts in the State of Florida have power to decree alimony payments against a husband. It necessarily follows that the amount and duration is left to the judgment of the courts of that state. If the trial court errs, and we don't concede that the trial court erred in this case, the losing party has his right of appeal through the proper appellate channels. Once that right of appeal is lost it is not within the purview of any court to say what the Florida court should have held. The judgment becomes final as to all parties everywhere.

The majority opinion of the West Virginia court in support of its position cited in the case of *Diegaard* vs. *Diegaard*. (Florida Appellate Court, not the Supreme Court) 114 So. 2d 516. In that case, the trial court awarded alimony in the amount of $75.00 per week to the plaintiff together with a lump sum of $5,000.00 as post demise alimony in the event of the husband's death prior to the remarriage or the death of the wife. The Florida court in deciding this case quoted the statute which provides: "In any award of permanent alimony, the court shall have jurisdiction to award periodic payments *or payment in a lump sum*." Emphasis ours. In dealing with the lump sum award the Florida court said "It has been held that a Chancellor cannot award both periodic alimony payments and lump sum alimony." The statute, as above pointed out, provided that alimony could be either periodic payments or a lump sum payment. The Florida court merely held there was no statutory authority for both. Thus we see that the majority of the West Virginia court cited authority which does not support its position. The same may be said for *Gessler* vs. *Gessler*. 273 Fed. 2d 302 also relied on in the majority opinion of the West Virginia court.

We respectfully submit that a judgment of a court of record in any one of the fifty states of the Union is not open to question in a sister stater povided that the court which rendered the judgment had jurisdiction of the parties and of the subject matter and that the judgment was not procured by fraud.

It is admitted that the Circuit Court of Dade County, Florida, had jurisdiction of the parties and of the subject matter. It is not contended by anybody that there was fraud in procurement of the judgment. These propositions being true, we submit that the judgment cannot be attacked in a West Virginia Court. *Gavenda Bros. Inc.*, vs. *Elkins Lime stone Co., Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; and *Caswell* vs. *Caswell*, 84 W. Va. 575, 100 S. E. 482, and a long line of cases cited in these authorities so hold. The majority of the West Virginia court says the Florida judgment may be attacked. Why? Because the court believes the decision of the Florida court to be wrong. This is a mere supposition since the Supreme Court of Florida has not dealt with a decree exactly like the one in the instant case though it has stated that such a decree is valid. *Johnson* vs. *Every*, 1957, 93 So. 2d 390.

The West Virginia court in the majority opinion said: "When a judgment or decree of a court of another state is sought to be enforced in a court of this state, the court in this state may inquire into the jurisdiction of the court which rendered the judgment or decree, and if it appears that such court had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, the judgment or decree is binding in this state." This is a correct statement of law which is universally accepted. Yet the majority opinion repudiates this proposition in its holding by confusing jurisdiction with the correctness or incorrectness of the decision sought to be

enforced. This we submit cannot be done. Jurisdiction is one thing and a decision on the merits is another.

3. *The Florida judgment in question is not repugnant to the policies or laws of West Virginia since like decrees may be entered and enforced by the courts of this State.*

The case of *Hale* vs. *Hale*, 108 W. Va. 337, 150 S. E. 748, deals with the proposition of whether the Supreme Court of West Virginia, upon decreeing the dissolution of a marriage, may award alimony during the life of the wife. This was a suit for divorce a vinculo matrimonii following a divorce from bed and board in which the wife sought permanent alimony. In point two of the syllabus the court made the following holding:

> "Where a dissolution of a marriage is decreed upon the application of a wife, the court may provide for alimony during the life of the wife, under Code c. 64, section 11."

In the opinion the court said:

> "As a general rule, where a wife granted a divorce a mensa et thoro, her inchoate right of dower and her right to participate in the distribution of her husband's personal estate remaining unimpaired, alimony, if granted, should be only for the joint lives of the parties, or until reconciliation. Henrie v. Henrie, 71 W. Va. 131, 76 S. E. 837. But, where the divorce is to the wife a vinculo matrimonii, and her right to participate in the estate of her husband is cut off, then it is within the power of the trial chancellor to require alimony to be paid to her through her life, that is, to be paid by the husband while living and out of his estate after his death, pro-

> vided the statute of the state is sufficiently broad to cover such contingency. 19 C. J. pp. 278, 279; 1 R. C. L. p. 933; Nelson on Divorce and Separation, vol. 2, p. 880. Our statute, Code c. 64 §11, clothes the chancellor with wide power in making such 'decree as it shall deem expedient, concerning the estate and maintenance of the minor children.' We think this is of sufficient breadth to warrant a requirement by the trial court that permanent alimony may be paid out of a husband's estate after his death, when, in the chancellor's opinion, such course is just and right. See generally Hartigan v. Hartigan, 65 W. Va. 471, 473, 64 S. E. 726, 131 Am. St. Rep. 973, 17 Ann. Cas. 728; Gum v. Gum, 122 Va. 32, 94 S. E. 177. But, since in many instances there cannot be as large alimony paid by a man's estate as he was able to pay in his lifetime, such allowances will be subject to necessary modification as exigencies of the situation may require."

The case of *Jennings* vs. *First National Bank of Williamson*, 116 W. Va. 409, 180 S. E. 772, holds that a decree of divorce providing for alimony during the life of the wife is valid and enforceable when based on a property settlement contract. While this is not controlling on the matter raised in the instant case it does lend force to the proposition that alimony for life, even when it comes out of the deceased husband's estate, is not repugnant to the laws of West Virginia. Therefore, the majority opinion of the West Virginia Court cannot be sustained on the proposition that enforcement of the Florida decree in the instant case would do violence to legal principles of that State.

4. *The questions raised are of great general and public interest.*

The founding fathers in writing the Constitution intended

that the public Acts, Records, and Judicial Proceedings of each state should be respected in all other states of the Union. As applied to a judicial proceeding, they intended that a judgment in one state would be a finality on all questions raised or which could have been raised. Hence Article 4, Section 1 was written.

The rule which we are insisting on has been followed consistently wherever and whenever raised in the United States. The only variance has been where the court lacked jurisdiction of the parties or the subject matter; or where the judgment was obtained through fraud. The majority of the Court in West Virginia departs from and overrules these well established principles. It would have the judgments of sister states reviewed anywhere, and any time, and would make them subject to be overruled in any forum where presented. If this opinion should become the law of the land, Article 4, Section 1 of the Constitution would be nullified.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of Appeals of West Virginia should be reversed and this action remanded to the Circuit Court of Putnam County, West Virginia, with directions that it give full faith and credit to the decree of the Circuit Court of Dade County, Florida, and hear evidence in support of the petitioner's amended complaint and determine whether the transfers and conveyances complained of by her should be set aside.

Respectfully submitted,

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